

Indian Round Table Conference

(SECOND SESSION)

PROCEEDINGS
OF
FEDERAL STRUCTURE COMMITTEE
AND
MINORITIES COMMITTEE
(Volume I)

CALCUTTA: GOVERNMENT OF INDIA
CENTRAL PUBLICATION BRANCH

INTRODUCTORY NOTE

Proceedings of the Second Session of the Indian Round Table Conference in Plenary Session will be published separately as a Command Paper, to which this volume is supplementary.

The Introductory Note to the Command Paper explains, briefly, the procedure adopted by the Conference at its Second Session.

NOTE.

The following Heads for discussion were placed before the Committee by the Chairman:—

1. Strength and Composition of the Federal Legislature.
2. Questions connected with the Election of Members of the Federal Legislature.
3. Relations between the two Chambers of the Federal Legislature.
4. Distribution of Financial Resources between the Federation and its Units.
5. The Ministry and its Relations with the Legislature.
6. Distribution of Legislative Powers between the Federal and Provincial Legislatures, and Effect in the States of Legislation relating to Federal Subjects.
7. Administrative Relations between the Federal Government, the States and the Provinces.
8. The Federal Court.

It will be noted that: (*a*) the above Heads were not taken up by the Committee in numerical order; (*b*) Heads 5 and 6 were only partially discussed; (*c*) no discussion on Head 7 has yet taken place.

Detailed points for discussion in connection with each Head were drafted by the Chairman. They are printed in this volume at the commencement of the proceedings under the respective Heads.

TABLE OF CONTENTS.

FEDERAL STRUCTURE COMMITTEE.

FEDERAL STRUCTURE COMMITTEE.

COMPOSITION:

Lord Sankey (*Chairman*).
*Mr. Wedgwood Benn.
*Major W. E. Elliot.
*Viscount Hailsham.
Sir Samuel Hoare.
Mr. H. B. Lees-Smith.
The Marquess of Lothian.
The Earl Peel.
*Mr. F. W. Pethick-Lawrence.
The Marquess of Reading.
*H.H. The Maharaja Gaekwar of Baroda.
H.H. The Nawab of Bhopal.
H.H. The Maharaja of Bikaner.
*H.H. The Maharaj Rana of Dholpur.
*H.H. The Maharaja of Rewa.
H.H. The Chief Sahib of Sangli.
Sir Akbar Hydari.
Sir Mirza Ismail.
Colonel K. N. Haksar.
*H.H. The Aga Khan (from 16th November, 1931).
*Dr. B. R. Ambedkar.
*Sir Maneckjee B. Dadabhoy.
*Mr. M. K. Gandhi.
*Mr. A. R. Iyengar.
Mr. M. R. Jayakar.
Mr. M. A. Jinnah.
Mr. T. F. Gavin Jones.
*Mr. N. M. Joshi.
*Pandit Madan Mohan Malaviya.
*Sir Provash Chunder Mitter.
Diwan Bahadur Ramaswami Mudaliyar.
Sir Sayed Sultan Ahmed.
Sir Tej Bahadur Sapru.
Mr. Srinivasa Sastri.
*Dr. Shafa'at Ahmad Khan.
Sir Muhammad Shafi.
*Mrs. Subbarayan.
*Sir Purshotamdas Thakurdas.
Sardar Ujjal Singh.
*Mr. Zafrullah Khan.

* Denotes new members.

Sir Manubhai Mehta acted as substitute in the absence of H.H. The Maharaja of Bikaner.

Lord Snell acted as substitute in the absence of Mr. Wedgwood Benn, Mr. Lees-Smith and Mr. Pethick-Lawrence.

Rao Bahadur Krishnama Chari acted as substitute in the absence of H.H. The Maharaja Geakwar of Baroda.

Mr. E. C. Benthall acted as substitute in the absence of Mr. Gavin Jones.

again. The sight of this gathering in these rooms, as by magic, switches us back to when we were meeting here last time, and I am very glad personally to renew the friendship made in those days and to meet new friends who have arrived here for the first time. I dare say you have been reading the newspapers, and that you will have seen that changes have taken place since we last met. Be assured, my friends, that whatever changes have taken place, there has been no change in public aims, and I venture to say no change in private friendships. The great discovery, I think, which we made in those previous conference was that until we put ourselves in each other's shoes we could find no key to unlock the very complicated lock of Indian problems; but as soon as you had the imagination to think of yourselves as us, and we had the imagination on the other hand, to think of ourselves as you, we began to find that the key which we put into this intricate lock began to work in a very admirable and successful way. Let us go back to that. Let us begin these deliberations in the same way as we ended the last ones.

Lord Sankey remains the Chairman of this very important Committee. Is not that, of itself, my friends, a guarantee of how the work is to be done? So far as I am concerned, I remain the Chairman of the Round Table Conference; and if, during the next few days, may be for a week or so, I shall be almost absolutely absorbed in other matters, that does not mean that I have ceased to remember the duty I owe to you, or that I am not desparately determined that the same good relations which I was able to establish then shall be continued in the future. That is all I need say at this moment.

Believe me—and I am repeating myself because it is so big in my mind—believe me, the memories that this little gathering recalls, the scenes that it makes alive again, are very pleasant to me, and fill me with the ambition to bring all our work to a successful fruition—successful to you and successful to us.

H.H. The Maharaja of Bikaner: Prime Minister My Lord Chancellor, My Lords, Mrs. Subbarayan and Gentlemen, We meet to-day before the Delegation from the Indian States is completed. In the absence of that veteran Prince, His Highness the Gaekwar of Baroda, and the Chancellor of the Chamber of Princes, His Highness the Nawab of Bhopal, the privilege falls to my lot to thank you, My Lord Chancellor, for the generous words of welcome which have fallen from you, and the Prime Minister for the equally reassuring and kind words with which he has greeted us. We rejoice to know that, notwithstanding the changes which have taken place in the personnel of His Majesty's Government, the Federal Structure Committee will continue to enjoy the wise guidance of you, My Lord Chancellor, and that the Conference as a whole will again meet under the chairmanship of the Prime Minister, Mr. Ramsay MacDonald. Some of those we met last

winter as members of the Government of the day will be in opposition; some of those who were more care-free will be in the trammels of office. We shall miss the official co-operation of our friend Mr. Wedgwood Benn, who, as Secretary of State, gave vivid evidence of his active sympathy. We welcome the still more active association of Sir Samuel Hoare. We in India know no Party in the British political sense; and we are confident—and in thus hoping we are encouraged by the words which fell from you, Mr. Ramsay MacDonald—that our British colleagues, whether in office or in opposition, will continue to be governed by the spirit which governed our earlier discussions—the lasting good of India and the British Commonwealth and of our beloved King-Emperor, whom we are all proud to serve.

There are matters of procedure which we may have to raise later. But I would ask you to believe, My Lord Chancellor, that we are grateful for the kind welcome which you have accorded to us; and I would also express our confidence in you and in the Prime Minister and in our colleagues, and my unflinching belief that, under your guidance, and with the constant inspiration of His Majesty the King-Emperor, we shall pursue this great task to a successful issue—differing perhaps on a few details, but united in the spirit of service to India, the Empire and the Crown.

Sir Samuel Hoare: Your Highnesses, My Lord Chancellor, Prime Minister, Mrs. Subbarayan and Gentlemen, When we adjourned last autumn, who would have thought of the changes that have taken place in this short space of time? Who would have imagined that I should be standing here with the Prime Minister and the Lord Chancellor as my colleagues in the Government on the one hand, and Lord Reading as one of my other colleagues on the other hand? Truly, the ways of Providence are inscrutable! Truly, the changes and chances of the world are beyond our calculation!

Mrs. Subbarayan and Gentlemen, the Prime Minister has already stated quite clearly and definitely that, in spite of all these apparent changes in the status of the personnel of the British Delegations, there is no change in the attitude with which we, the members of the Conservative Delegation—and here I am speaking in my double capacity, both as a member of the Government and as a member of the Conservative Delegation—approach the problems that we are going to discuss. Our position and our attitude are identically the same as our position and our attitude were in the discussion of last autumn; and do not think that, because our status has changed, therefore our opinions have altered. I am as anxious—and so are my Conservative colleagues—as any in this room to see a settlement of our many problems that will ensure both sound government and good will between India and England; and it will be my endeavour, just as it was my endeavour last autumn, to try to carry that into effect.

There is only one other observation that I should like to make. Lord Peel is to-day taking the Oath of Office at Balmoral; otherwise he would have been present to say a word in support of my words as a member of the Conservative Delegation. Lord Hailsham, who has, as you know, been added to the Conference and to this Committee, has, unfortunately for us, been compelled to take a short holiday. None the less, he will follow our proceedings closely and carefully, and I hope that, when his holiday is finished, we shall have the benefit of his very valuable advice.

Having made these few observations of welcome, let me end by responding to the kind words just uttered by His Highness of Bikaner. I am grateful to him for the word of welcome that he has addressed to me, and I can assure him that we shall approach these questions with a desire to find a solution, with an anxiety for settlement, with a firm intent to increase the good will between India and Great Britain: and that these political changes that have taken place in the last few days and in the last few weeks will in no way alter the sincerity and the energy with which we shall approach that task.

Sir Muhammad Shafi: Lord Chancellor, On behalf of my colleagues, as well as from myself, I desire to express our grateful appreciation of the cordial welcome which you have been pleased to extend to us on our resumption of the great task undertaken by this Committee this afternoon. Coming, as this message of welcome does, from one who, if I may venture to say so, has, by his great ability, consummate tact and unrivalled courtesy, already won a high place in our esteem and affections, it would have been welcome in any case; but, coupled with the very kindly and gracious sentiments and the welcome pronouncements made by the Prime Minister and the Secretary of State this afternoon, that message is doubly welcome.

We have travelled across the seas to resume a task the completion of which, if made to the satisfaction of all the interests, British as well as Indian, which find so important a place in India, will be a land-mark in British-Indian history and will conduce not only to the happiness and contentment of the vast population of that sub-Continent, but will, we hope and trust, strengthen the connection which binds India and England together. My Lord Chancellor, God grant that we may succeed in framing for India a constitution in which all sections of its peoples, irrespective of colour, caste and creed, will find their legitimate place! Should that consummation be reached, not only will the happiness and contentment of 350,000,000 of His Majesty's Indian subjects be thereby secured, but India will be a source of strength to that great Commonwealth of which she aspires to be an equal partner.

Mr. Wedgwood Benn: Lord Chancellor, My first duty is to express on behalf of Mr. Henderson, the Leader of the Parliamentary Opposition, his regret that circumstances have prevented him

from being present this afternoon. So far as the Parliamentary Opposition is concerned, there is really no change in the situation from the Indian standpoint. Just as the Prime Minister truly said, our personal relations of affection and respect remain absolutely unaffected by the political whirligig of the last few weeks, so the feelings that we all entertain towards the Indian problem remain exactly as they were. Speaking for my friends—those for whom now I speak as their representative—I can say that I hope, in the capacity of an unofficial member of this Delegation, to have another opportunity of serving India in the way that I strove to serve her at our last meeting.

Sir Manckjce Dadabhoy: Your Highnesses, Lord Chancellor, Prime Minister, Mrs. Subbarayan and Gentlemen, As a new recruit to this Conference I may be permitted to associate myself with the sentiments which have been given expression by His Highness the Maharaja of Bikaner and my friend Sir Muhammad Shafi. We all realise that we meet now under very difficult circumstances; we are all aware of the great clouds which are now hanging over England; we all deeply sympathise with you in the unfortunate situation in which England has been placed. On behalf of my colleagues and myself I beg to express the hope that these clouds may soon disappear, that England may stand forth again in all its glory as one of the greatest financial countries, that she may settle her troubles before long, and that she may help India in settling her position and status. We are all very grateful to you, Lord Chancellor and Prime Minister, for the kind assurances which you have given us this afternoon. We are grateful to you for those assurances; we believe fully in the sincerity of purpose and the aim of the British Government to help India in her present critical condition and to discover the way to help her in the formation of a new constitution. In this work and in our deliberations you shall have the unstinted support of the new recruits who have joined this Conference. We shall help you in your deliberations and will endeavour to come to some decision which will meet with general acceptance. But one thing is certain: no settlement can be arrived at unless mutual sacrifices and mutual compromises are made. It is only by means of compromise that the future of India can be settled. I do appeal to everyone here to approach the deliberations which will take place in this Conference in a spirit of sympathy and compromise.

Lord Reading: Your Highnesses, My Lord Sankey, Prime Minister, Mrs. Subbarayan and Gentlemen, I am glad indeed that, in the change of position, I am still able to give my services, so far as I can, to this Conference and to assist in arriving at conclusions which will be helpful to India and to the Empire. My impression at the moment is that, in truth, amongst us who were members of this Conference when we separated in January, there will be no change in the atmsophere which fortunately prevailed then.

I think our desire must be to recapture and maintain that atmosphere of friendliness, of candour, of recognition of each other's point of view, and of desire to adjust as far as possible our own points of view, always having regard to the interests of the Empire and of India.

We have one other goal which I think we must strive to reach. I think those of you who were present during the last Conference will agree that we benefited very greatly by the contacts which we were able to make and by the discussions that we had together, sometimes in this Palace and sometimes outside. These were of very great use; and we should strive, not only to maintain that atmosphere, but to communicate it to those who have not yet taken part and who, perhaps, have not realised the value and advantage of the conferences that we had together.

Without seeking to detain you further, may I endorse all that has fallen so well from those who have already spoken; and may I say, on behalf of the Delegation which I represent at this moment, that we shall continue in the same spirit as before. We shall strive all we can to assist India and to bring contentment and peace and, we hope, greater happiness to India and consequently to the Empire.

Mr. Sastri: Lord Chancellor, On this side Sir Muhammad Shafi and Sir Manekjee Dadabhoy have with eloquence spoken for everybody. Nothing more needs to be said. We have no need to give assurances to those who sit on the other side of the Lord Chancellor that the old state of things obtains among us. There have been no revolutionary changes of Government or Opposition among us.

I am more than pleased to hear from Sir Samuel Hoare and from others that the startling changes which England has seen will not make any changes at all so far as India is concerned. That is a word of comfort which my countrymen will welcome; and if, as Lord Reading said, we are able, God willing, to recapture the spirit which animated the Conference when it sat last time, there need be no misgiving in any quarter as to the great results both for India and for the Empire which will follow.

Sir Tej Bahadur Sapru: I would respectfully reciprocate the sentiments to which expression has been given this afternoon by the Prime Minister, by Lord Sankey, and by other members of the British Delegations. Last year, in my opening speech, I ventured to express the hope that before the Conference concluded we would be able to arrive at some satisfactory conclusions. It was open to the critics of the Conference last year to say that the Conference was not representative of the entire country. It is a tribute to the spirit which was displayed last year at the Conference that an important party, which was withholding itself from the Conference, is now going to be represented here. Those who doubted the value and the utility of the last Conference will have to think

twice before they will be able to challenge the representative character of the people who have now assembled from my country.

Mr. Sastri has referred to the revolutionary changes in the position of the Government here. Personally, I feel that, while last year we had to deal with three parties among British politicians, we have now to deal practically only with two—the Opposition, who were the Government last year, and the Liberals and Conservatives and some members of the Labour Party, who have now combined themselves into one Government. Therefore, just as the Indian section of the Conference will be thoroughly representative, so it can be said that the British Delegations are thoroughly representative, and the task of settlement should therefore be all the more easy.

It is in that spirit that I approach the whole task before us. I am fully aware of the difficulties that lie ahead, but difficulties have to be faced and must be conquered. We cannot afford to let this Conference fail; it would be disastrous to India and it would be disastrous to the reputation of England. I think it is the business and the duty of every one of us, British or Indian, Hindu or Muhammadan, Parsee or Christian, to see that this Conference succeeds, so that the great problem of India may be solved to the satisfaction and contentment of India and to the credit and glory of England.

Sir Akbar Hydari: Mr. Prime Minister, Lord Sankey, Your Highnesses, Mrs. Subbarayan and Gentlemen, I had not intended to speak this afternoon but I cannot resist the call that has been made on me by Lord Sankey; and I wish to associate myself with the general expression of goodwill and satisfaction at our re-assembling here so early, notwithstanding the preoccupations which His Majesty's Government must have, to try to find a solution for the great problem which at present confronts the Empire with regard to India. We are all very grateful to the members of the British Delegations for their assurance that the same spirit and the same attitude towards a sympathetic consideration of the Indian problem exists now as it did before. Of this we were assured also when we learned that the constitution of those Delegations remains practically the same, although perhaps some places have been changed in a physical sense.

So far as we on this side are concerned, speaking on behalf of Hyderabad, I should like to assure you that our attitude remains exactly the same as before, and that the structure which you commenced to build on the last occasion still remains the one the construction of which we hope to continue. We think that the Federal idea is the only idea that will really meet the needs of India's case, and we hope that in every possible way we may be able to assist in helping you towards the completion of that structure.

(The Committee adjourned at 3-45 p.m.)

PROCEEDINGS OF THE TWENTY-FIRST MEETING OF THE FEDER- STRUCTURE COMMITTEE, HELD ON MONDAY, THE 14TH SEPTE- BER, 1931, AT 11 A.M.

Preliminary—contd.

Chairman: Your Highnesses, My Lords and Gentlemen, I should like very much to welcome the three new Delegates to our Federal Structure Committee, His Highness the Gaekwar of Baroda, Mr. Gandhi, and the Pandit Malaviya. We are very glad indeed to have them. I think without them our gathering would not have been representative; and now we have all shades of thought and opinion, and I feel quite sure that with patience and good-will we shall get to some settlement.

This is an opportunity for any new members who desire to address the Federal Structure Committee to say anything that they wish to say, but I am sure you will forgive me for saying that this is not the moment to express final opinions; all we have to do at present is to make suggestions and to see how far those suggestions are acceptable. I do not for a moment suppose there will be anything at all in the nature of what is called an ultimatum, but I would remind you that an ultimatum comes, if at all, at the end and not at the beginning of the negotiations.

H.H. The Maharaja Gaekwar of Baroda: My Lord Chancellor, I should like to thank you for your kindly words of welcome. We are about to take up the threads where they were, for a time, dropped last year. We are to attempt, if I may change the metaphor; to build a superstructure on the foundations which were then laid. Let me assure you, My Lord, that we are all—for I feel sure that I can speak with equal confidence for my brother Delegates as for myself—ready to do our best to find a solution of the difficult problems which confront us, and to reach the goal which we all desire. It may not be easy; but with good will and with determination we shall surmount the obstacles, however formidable they may be, and I trust that when the time comes again for parting we shall see more clearly the vision which I have long cherished and which has been the dearest dream of my life—the vision of a united and self-governing India working together for the good and for the progress of the Indian people.

Dr. Shafa'at Ahmad Khan: My Lord, I thank you for the pportunity you have given to new members for the expression of ıeir views on some of the points of the Federal Structure Sub-ommittee's Report, Sir, I have heard from a safe distance of the ırk you have done and of the great and unexampled courtesy, ıt and resource which you have shown in the management of s Committee. My experience of the Committee is very limited; from what I have gathered during the last week I can say , if we carry on the work in the spirit in which it was carried ıst year, I am perfectly certain that we shall be able to achieve ıg foundations for the welfare, security and safety of India

My Lord, this is a Committee not dealing with low or sordid details, but it is a Committee which is preparing a constitution for millions, may be for generations. It reminds me of the old Roman Senate—not a Committee of ordinary individuals but a Committee of statesmen. I am not presumptuous enough to think that whatever I may say will be of any substantial help to the members of this Committee. My only qualification for the task is that I have had practical experience of the Provincial Legislature for seven years; I have been Chairman of local bodies and Chairman of the Muslim members of the Legislative Council in my own Province for a short period. This is a very limited experience, but I claim that in dealing with matters of this kind it is practical experience that counts. Although I have had only a limited practical experience I will try to embody that experience in the remarks which I am going to make.

I am speaking not only in my personal capacity, but I am speaking on behalf of the section which I have the honour to represent in this body. Lord Chancellor, my task has been facilitated by the fact that the sub-Committee itself made it perfectly clear that the Report was provisional and, in a way, incomplete. I think, Sir, you very wisely left a number of details to be settled by negotiation or discussion in future. Again, when the scheme of federation was broached in this Committee, very few people in India knew or understood its significance at the time it was discussed here. Within the last six months, since our return to India, every section and every interest knows the implications of the proposals of the sub-Committee, and public opinion has been mobilised on some of the most important recommendations in the Report of this sub-Committee. We are, therefore, in a position to express clear, definite, unambiguous and certain views on some of the points to which I should like to draw attention.

Then there is another factor, Sir, to which I should like to refer, and that is the presence of Mahatma Gandhi. Whatever view I may take, or whatever view other people may take, as regards certain problems with which we may be faced later, it cannot be denied that Mahatma Gandhi's personality is a unique contribution to the solution of Indian problems. He has played a great part in the past and I hope he is going to play it in the future. That is a factor of tremendous importance so far as this Committee is concerned, and it removes one objection which has frequently been urged against this Conference—the objection that very strong, influential, representative bodies, wielding really great influence in India, have not been represented at the Conference. That objection is removed, and I can say now that this Committee, with Mahatma Gandhi's presence, can deliver the goods; and if anything is approved by all the interests and all the communities represented here it will have the sanction of England, of India, and of the World behind it.

Sir, I would like to make a few remarks which, I hope, will be noted; and if opportunity is provided for further discussion I

shall be quite willing to adduce arguments in support of the marks. I believe that this is not the occasion and not the for arguments on any points that I may bring forward. The for argument may arise, and I hope will arise, when we deal specific issues. Again, Sir, I am not here, and nobody is h to start debating points with one another. We are not really a house of legislature. We are here to construct. We are here to start carping criticism on any point that may be broug forward for discussion.

Having made these remarks, Sir, I will now go ahead with th task and I will offer just a few suggestions for the consideratio of this Committee.

I come, Sir, to the basic principle of federation. So far as the principle of federation is concerned I am in complete agreement with the idea. There is not a single Indian, to whatever party he may belong, whatever interest he may represent, who is not whole-heartedly in favour of the principle outlined with such great zeal, intellect and ability by my friend Sir Tej Bahadur Sapru. But, so far as details are concerned, I am afraid at this stage I cannot commit myself. I believe, Sir, that, to use a hackneyed expression, until the picture is complete it will be quite impossible for me to say whether federation really is practicable, and what is useful both for India and for the Indian States. I will give only one example to illustrate the difficulty which I and some of my way of thinking feel on this point. Take the question of the quantum of representation in the two Houses of the States. Until I know what it is going to be I really cannot say whether the price we are going to pay for federation will be suitable.

Then, Sir, my second point is that in a proper and genuine federation there must be complete autonomy of the constituent units. If we are going to have a federation of the type which some of us contemplate, I say it is absolutely essential that it should be a genuine and a true federation. Unless it is so, there will be paralysis at the Centre and anæmia at the circumference. We therefore require true and real sovereign states of British India. We do not require a unitary government with territorial decentralisation. In order, therefore, that the idea may be carried out logically, authoritatively and consistently, in my humble opinion, it is necessary that the list of subjects appended at the end of the Report of the Federal Structure sub-Committee should be revised I believe that certain of the subjects called "Central" subjects could easily be handed over to the Provinces.

In the third place, Sir, I believe that it is absolutely essential for the success of the Federation which we are going to introduce that Law and Order in all Provinces should be the exclusive charge of the persons at the helm of those Provinces. The Federal Legislature or the Federal Cabinet should have absolutely no power over the department dealing with that supreme question of

and Order. I can quite imagine, Sir, that cases may arise in which more than one Province may be concerned; emergencies may arise. I claim that in those cases the Governor General, and the Governor General alone, should have the power: that neither the Federal Cabinet nor the Federal Legislature should be competent to interfere in the details of administration of any Province. I believe, Sir, that the Report does contain a provision wherein it is stated that the Governor General shall be empowered to adopt measures for the safety and tranquillity of British India. I believe the object could be attained by empowering the Governor General to take measures if and when such cases arise. I do hope that the cases will be rare, and I am certain that the Governor General himself would not like to interfere or to do anything which is likely to affect the autonomy of any Province. But, if he does, and if he is justified in doing it, then I am sure that his conduct will be approved, provided he keeps within the limits assigned to him in the Constitution.

Then, Sir, there is another point which is a corollary to this. The Home Member and the Government of India at the present time have enormous powers, tremendous powers. When Law and Order is transferred to the Provinces those powers will have to be strictly circumscribed and limited, and the Home Member in India of the future will be practically in the same position as the Secretary of the Interior in the United States of America. He will have nothing to do with Law and Order, but will occupy the position in India which is now occupied in America by the Secretary of the Interior of the United States of America.

Then, Sir, I come to a somewhat ticklish question; but I think it is absolutely necessary for people who think as I do to be absolutely frank. I want to lay all my cards on the table. So far as the States are concerned I think their representation in both Houses should be according to population.

Then there is another provision which I think will have to be kept prominently in view. When the constitution confers autonomy on the Provinces it must be made perfectly clear that it also involves complete financial autonomy. It is not sufficient to have mere political autonomy; it is essential that each Province should have complete power over the purse. The necessity for this will be apparent from the fact that a recent Report on the working of the Federal Constitution in Australia has shown that it is the power of the purse in the Central Government which has very seriously limited the work and the functions of the various States of the Federation.

The next point connected with this is the question of the participation of the Indian States in the Federation. I am, and have been, of the view that British Indians should not interfere in the affairs of the Indian States. I respect the autonomy of the Indian States; I regard the Treaties made with them by the East India Company and by the Crown as sacred, and I would most certainly

oppose any attempt on the part of anybody to dictate to the Indian States as regards their internal affairs or domestic policy. But, while I do so, I also expect in return that the doctrine of neutrality will be observed by the States in regard to the affairs of British India, and I am very glad indeed that the Chancellor of the Chamber of Princes and His Highness the Maharaja of Bikaner made this point perfectly clear in their speeches at the meetings of the sub-Committee.

My difficulty is that, if representatives of some of the Indian States are included in the Cabinet, it will be quite impossible for them to keep completely aloof from the current of British Indian politics, and British Indian politics are bound to have repercussions on the domestic policy of the Indian States.

I am only pointing out the consequences. I do not like them myself, but I am simply trying to show what will ultimately happen. I believe that, in order to avoid this, appropriate machinery should be devised. I do not know if it is possible; I have not been able to conceive any method which will lead to the erection of a " Chinese Wall " round the States. It is quite impossible for me to conceive it; but if it is possible to do so I would most certainly welcome it. My difficulty is that, if representatives of the Indian States are included in the Cabinet, they are bound to be involved in the politics of British India, and it is quite impossible, therefore, for the Indian States to keep absolutely aloof from the current of national politics.

Then, Sir, there is another point to which I should like to draw the attention of this Committee. In one of the sections of the Report of the sub-Committee, it is pointed out that the Governor General will, of course, appoint a person who will be the Prime Minister, and the Prime Minister will choose his colleagues to form the Cabinet. Let me say at once that I entirely agree with the principle enunciated there. I believe that, in the Dominions, this is and has been the practice for a number of years. I feel, however, that in the present circumstances of India occasions may arise when it will be quite impossible for the Governor General to select one man who has the confidence of the majority of the Legislature. If and when such occasions arise, then the Governor General should have the power to appoint members of the Cabinet direct. I hope that such cases will be few and far between, but a constitution is not made merely for normal occurrences —it must provide also for emergencies; and I claim that, if this principle is mechanically or automatically followed in some cases, it may bring about a deadlock and the constitution may not really be workable. I therefore propose that a provision should be made in the Constitution whereby the Governor General should, in exceptional circumstances, be allowed to appoint persons direct as members of the Cabinet—the leaders of the various groups, and so on. There may be occasions when a person has a party of, say, a hundred numbers, while someone else may have another party

I am very glad indeed that the presence of Mahatma Gandhi will, as it is bound to do, facilitate our task. There is no reason why the Minorities Committee should take a very long time. There are only a few points—though, of course, points of supreme importance—left; and I am perfectly certain that, with the help and co-operation and real, genuine sympathy of Mahatma Gandhi, Pandit M M. Malaviya and other gentlemen represented here, we shall be able to achieve a lasting and a true and a genuine settlement of a problem which has baffled a number of persons for at least ten years.

Mr. Sastri: May I enquire whether Dr. Shafa'at Ahmad Khan spoke for the whole of his community in the observations with which he concluded? I thought he began by making such a claim.

Chairman: I do not know about that. I think that is a question which perhaps you might ask him a little later.

Mr. Iyengar: I am grateful to you, My Lord Chancellor, for giving me the opportunity to say a few words at the outset of the resumption of the work of this Committee. I am here as a *novus homo,* and therefore have not had the advantage of being in full possession of all that I should know as to the stage at which, and the methods by which, we should proceed to complete the task assigned to this Committee. You will permit me to explain, My Lord, that the honour and privilege of participating in this work here were extended to me by the Premier; and I am glad to be able to accept the same, in pursuance of the Declaration he made when the Conference last adjourned on behalf of His Majesty's Government, and of the policy that resulted at the conclusion of the Gandhi-Irwin Agreement. In the course of that Declaration it was stated that:—

> "His Majesty's Government will consider, without delay, a plan by which our co-operation may be continued so that the results of our completed work may be seen in a new Indian Constitution. If, in the meantime, there is a response to the Viceroy's appeal to those engaged at present in civil disobedience, and others wish to co-operate on the general lines of this declaration, steps will be taken to enlist their services."

Later on it says that:—

> "His Majesty's Government will strive to secure such an amount of agreement as will enable the new Constitution to be passed through the British Parliament and to be put into operation with the active good will of the people of both countries."

We are therefore here, My Lord, to help to see that the present British Parliament is able to put through that legislation for the establishment of the new Indian Constitution. The participation

of Mahatma Gandhi as the sole accredited representative of the Congress in this Conference for the above purpose has been made possible by the successful issue of the negotiation which Lord Irwin had with Mahatma Gandhi; and I assume, therefore, My Lord, that all of us who are here to-day will resume our deliberations on the basis of the policy that was formally recorded in that document of State. It states as follows:—

> " As regards constitutional questions, the scope of future discussions is stated, with the assent of His Majesty's Government, to be with the object of considering further the scheme for constitutional government of India discussed at the Round Table Conference. Of the scheme there outlined, federation is an essential part; so also "—(and I would stress it with reference to what my friend Dr. Shafa'at Ahmad Khan said)—" are Indian responsibility and reservations or safeguards in the interests of India for such matters as, for instance, defence, external affairs, the position of minorities, the financial credit of India and discharge of obligations."

It seems to me, therefore, My Lord, that there could hardly be any dispute among any of us here on the fundamental propositions thus set forth; and our task must be to see, as the Prime Minister said at the time, that no delay takes place in putting the new constitution into operation, and that it starts with the goodwill and confidence of all the communities concerned. I am hopeful, My Lord, now that the plan of federation has obtained acceptance, that its general principles will be clearly recognised and fearlessly applied in discussing the schemes which we should establish and develop. Similarly, once the principles and the views declared by the Government are accepted—namely, that responsibility for the Federal Government of India should in future rest upon Indians themselves, and that the proper method of giving effect to this principle is to follow what has been adopted in all Dominion constitutions—questions connected with transitional reservations and safeguards are bound to be solved satisfactorily to everybody concerned, provided the principle is honestly accepted and carried out without mental or other reservations. It was from this standpoint that, I believe, the Gandhi-Irwin pact—which was concluded after full discussion and with the full assent of His Majesty's Government—declared that the safeguards to be discussed in this and other Committees should be in the interests of India, certain misapprehensions about which were definitely removed by Lord Irwin within a few weeks after that agreement.

I do not propose to-day, My Lord, to elaborate my ideas on the details of the plan which it will be our duty to devise: but I hope, as the discussion developes, to offer them to the Committee for what they are worth in the order which you, My Lord, have laid down, as to the detailed points on which we should find agreed solutions.

There are only two or three observations which I may, perhaps, make at this stage on the position in regard to the three essential bases on which we resume our conversations: namely, federation, responsibility and safeguards. As the Federal Structure sub-Committee's Interim Report points out, the process of federation will involve the creation of a new State. I think it is necessary for us to clearly realise that what the new constitution will bring into existence is a new State. If I may borrow, perhaps, antiquated German phraseology, what we will want will be a Bundestrat and not a Stattenbund; and from that point of view, if we approach the problem of how to devise this Federation with due regard, I quite concede, to the rights of Indian States and to the rights of provincial autonomy which Indian Provinces possess, I do not think it will be difficult for us to devise a plan by which we can definitely separate the functions of the Federal authority and of the State authorities. Nor do I think the fact that we have got to scrupulously observe the Treaties, which the British Government has made with the Indian States, necessarily militates against the proposition that we, as we are, should conceive ourselves as a big State. As His Highness the Maharaja Gaekwar of Baroda stated at the very outset, what we all aspire to, we of the Indian States and we of the British Provinces, is a united and self-governing India. When that position is conceded, it seems to me, Sir, that the question as to how we shall provide for the protection of Treaty rights and for the protection of internal autonomy could be easily devised by those whose legal knowledge and authority we shall have at our disposal in the course of our deliberations in this Committee.

On this matter, further, I desire to point out that this idea of what the Maharaja called a united and self-governing India is an idea which, from the point of view, if I may say so, of the external personality of this country, has been accepted in all our international transactions. We British Indians and Indian States, to all intents and purposes, present the appearance of a united and self-governing India to the outer world in regard to transactions connected, for instance, with the League of Nations, with the Imperial Conference, and various other institutions in which, so far as the theory of representation is concerned, India is treated as a member of the British Commonwealth to which we all belong. Whether we shall become free and equal partners in the Commonwealth is the problem which we are going to solve at the sittings of this Committee.

Then, Sir, the only other point on which I think that this question of the relations of Indian States and the Federation will arise is in regard to the basis on which we are here to conduct our future proceedings, namely, with regard to responsibility. As the Federal Structure sub-Committee's recommendation on this matter recognised, this responsibility is to be established in the same manner in which other members of the British Commonwealth as well as the British Constitution have established it, namely, that of

Parliamentary responsibility. Now, if we accept the principle of Parliamentary responsibility as you have very properly put it in the Report:

> "In the opinion of the sub-Committee the proper method of giving effect to this principle is, following the precedent of all the Dominion constitutions, to provide that executive power and authority shall vest in the Crown, or in the Governor-General as representing the Crown, and that there shall be a Council of Ministers appointed by the Governor-General and holding office at his pleasure to aid and advise him."

—(that is the technical form in which ministerial responsibility, as we understand it, under the parliamentary constitutions, has been provided for in all Dominion constitutions)—on that footing, Sir, I am perfectly confident that the Indian States will be as anxious to come in and take their proper position in regard to the discharge of responsibility in the Federal Legislature, in the same manner in which that responsibility is borne in other parliamentary constitutions. Therefore, in discussing the question as to how this responsibility should be enforced under the constitution we devise, we have to bear in mind this principle whatever may be the variations or other reservations that we may, for the transitional period, find it necessary to provide.

The third point, of course, upon which we shall have to be engaged—and this seems to me to be by far the most important of the points which we have to consider—is the question of safeguards. As I have already stated, if once we grasp firmly the principle that these safeguards are to be devised in the Indian interest—and I am sure that no one here or elsewhere who is honestly and genuinely anxious that India should be properly governed and well governed and that her aspirations should be met, will dispute it, that these safeguards are wholly intended in the interests of India—if that principle is firmly grasped, and we proceed to apply that principle to every suggestion or proposal that is made to us, it will not be difficult to find a formula which will be acceptable to all. The safeguards and reservations referred to are in respect of such matters as defence, external affairs, the position of minorities, the financial credit of India and the discharge of obligations. On the question of defence and external affairs, I do not propose to say anything now. But I believe I shall have something to say as to the extent to which the Indian Legislature to-day and the Executive Council also have a good deal of power already devolved upon them under the scheme of the Government of India Act; and, if we examine the principle under which this power is already vested in the authorities which act under the Statute by which the Legislature and the executive authority of India have been established, I do not think that, merely because the actual power is exercised by different persons and the actual constitution of the Legislature is made broader and wider, that would affect either the legal position

or the constitutional status that are already provided for the Indian Legislature and the Indian Government.

On the question of the position of minorities, I do not propose to offer any observations at this stage beyond saying that, coming from a Province where happily communal differences have no such prominence as they have assumed in other Provinces, I shall always be ready to co-operate with all sections of the people here assembled in offering such help as I can to devise a plan by which we can get an agreed solution. But I feel that we have now reached a stage in the course of these discussions when it would be impossible for us to await the continual carrying on of pourparlers, in which questions like these will never find a solution because there are sentiments, there are feelings, and there are, may be, genuine apprehensions on both sides, which only trust and confidence can remove. Therefore, I would beseech you, Sir, and other sections to see that we are enabled to come to decisions as quickly as possible in this matter. To me the prompt decision of these questions is as important as the character of the decision taken on these questions. That is all that I propose to say for the present, Sir, on the question of minorities.

As to the other safeguards, so far as I can see, Sir, they are confined mainly to the questions connected with the financial credit of India and the discharge of obligations. After all that has taken place I am certain that there will be absolutely no dispute in regard to the position that, as to whatever obligations are justly due from the Indian Government, there will be no disposition on the part of any government that will succeed it, under self-governing conditions, to repudiate any such obligation; and I hope that the needless excitement, dispute and suspicion that was excited has happily disappeared. As to such safeguards as may be necessary to secure the financial credit of India, those are questions on which I have repeatedly said it must be perfectly possible for those who are concerned with the financial position of India, and also the various commercial interests involved, to sit together at a round table and arrive at a satisfactory solution. After all, I do not think that safeguards in respect of financial credit and the discharge of obligations—or for that matter any safeguards—can be considered to be sacrosanct merely because we provide for them in certain articles of the constitution, and that, therefore, nothing can be done to break them. What is really wanted is good-will and agreement. No articles of a constitution can protect people in such matters. For instance, if a particular article in the constitution, even in regard to currency, is found in actual operation by all parties to be thoroughly unworkable—if we find that it becomes absolutely necessary to change that article of the constitution—then nothing that we have previously provided can make it sacrosanct. Therefore I appeal to the Committee that we should approach this problem, not with a view to get what may be called "Chinese Walls" erected to prevent this being done or that being done, but to get to a proper understanding and to promote an-

I shall at all times have the indulgence of this Committee which is so largely composed of experts. But I think any layman or woman on this Committee can be of some help by representing lay opinion. Though technically we are unskilled, we yet hold very strong views as to the principles on which our future constitution should be formed, and I should like to make just a few remarks on some of these important principles. I am not going into detail, nor will I attempt to deliver an ultimatum, but I would like to indicate to you how my mind is working.

Federation is, of course, the corner-stone on which the idea of a new India was based by the last Conference. I am full of hope that a real federated India will arise out of our deliberations. I feel that a real federation is undoubtedly the quick road to a united India, in which a harmonious and uniform national and cultural development will take place. I think the contribution of Their Highnesses to a scheme for achieving this great national ideal at the last Conference was a great feature. I am sure we all appreciate that Their Highnesses are prepared voluntarily to relinquish some of their powers to a Federal Government to attain this end. As His Highness the Maharaja of Bikaner so strikingly said at the last Meeting, they went along the path that duty and other considerations showed them, in spite of the difficulty and complexity of their task; and I am sure they will do the same till a proper scheme is formulated. May I respectfully tell Their Highnesses that I feel they will reap their reward when a united and prosperous India, in which no doubt the States will play a great part, takes her rightful place among the great nations of the world.

I would also like to say a few words on another question, which affects women in particular; I mean the political status of women in the new India. I should like to urge on this Committee the desirability of inserting a clause in the new constitution for India to the effect that sex shall be no barrier to citizen rights in India. I am not putting forward a novel idea. In most modern constitutions, like those of the Irish Free State, Austria and Germany, such provision is made. I would especially quote Article 109 of the German Constitution, which states that men and women have fundamentally the same civic rights and duties. I raised this question in the Minorities sub-Committee last year, but I should like to urge it before this Committee also. I think that the Committee will realise that such a declaration is but fair and just, particularly in view of the important position that women are coming to occupy in India.

I shall not dilate much on the political activities of our women, because they are well known, not only to you but to the whole world; but I should like to say a few words about their share in administrative work which, like all kinds of silent work, is not so widely known. In all ranks of life they are beginning to play their part. Among the ruling families I could instance Her Highness the Maharanee Regent of Travancore, who during her Regency has

proved that a woman can be a good statesman and an able administrator; and again, Her Highness of Sangli, who we all know is carrying on the administration of the Sangli State during the absence of His Highness here in England. I would like respectfully to mention also the name of Her late Highness the Begum of Bhopal, for whom we have great reverence and admiration.

In lesser walks of life, also, I can tell you from personal knowledge of my own Province, and by repute of other Provinces, of the remarkable public work which women are now undertaking. I can assure the Committee that in my own Province—and I am sure my colleagues from Madras will bear me out—it is quite usual and customary now to have honorary women magistrates and women on public bodies, like local bodies and municipalities, and of course on educational and health bodies. Women doctors are quite frequent and we are even becoming familiar with women lawyers.

I do not think I need say more to represent to this Committee that a clause to the effect that sex shall be no barrier to full civic rights should be embodied in our future constitution.

Then there is another important question about which I should like to say a few words. Many of the greatest and gravest issues at stake at this Conference are to be thrashed out here, and the Conference will probably stand or fall by the measure of agreement which can be reached in this Committee. Not least among these issues is the question of responsibility at the Centre. The previous speakers have already referred to it, but I should just like to make a few general remarks.

I myself admitted, on the last day of the last Conference, that in the Report that was presented to the Conference there were certain features which caused me grave disquietude. I referred to this in my speech, when I said I did not believe that India would accept a form of government which, while conceding the large principles of responsible self-government, contained details and reservations which would make it in reality something different from that. At the same time I believe that, as far as is consistent with our national aspirations, we should try to meet British fears and anxieties. I do not wish to go into details now in this general discussion; but I only want to indicate my uneasiness, and also to say that six months of renewed close contact with public opinion in India has strengthened my views. I am still more confirmed in my misgivings, and I do therefore ask my British colleagues at this Conference to appreciate that it is not the safeguards and the reservations that will sustain the new constitution, but the over-whelming force of a loyal public opinion.

Personally, I cannot believe that the interests of Britain and of India—and I am speaking in the widest and deepest sense of the terms—are incompatible. You told us, Lord Chancellor, at our last meeting that we shall never achieve our ambition unless we understand each other and try to appreciate each other's hopes and

fears. I hope that, in the days and weeks to come, the British will seek to understand the depth and force of Indian national ideals and that we Indians will seek to appreciate British fears and anxieties, and that in the end perfect understanding will cast out all fear and suspicion and we shall thus achieve agreement.

Before I conclude, may I touch for one moment on that most vexed and thorny question, the communal problem. I do not want to say much about it; I should not even have referred to it if it had not already been raised in this Committee. I do not want to say much about it as it is really a matter for the Minorities Committee, but I do just want to say this. I sincerely regret that, in spite of the efforts of some of our wisest and most distinguished countrymen, a settlement has not yet been reached. I do not want to probe present fears in order to ascertain whether they are ill or well founded; I will only say that it is obvious that these fears do exist now. There is also practical unanimity among all sections of our people that legitimate fears should be allayed. I earnestly hope, therefore, that a settlement may be reached—one that may allay present fears and anxieties and yet facilitate a fusion of interests and sentiments in the future. I hope and believe that in the new India these fears will rapidly disappear in a common desire to make our common country prosperous and contented at home, honoured and respected abroad. I earnestly hope that this Conference and this Committee will evolve such a scheme of efficient national government for India as may give confidence and security to all sections and classes of her people, together with the hope that full national unity will be speedily achieved.

I have made a short reference to some of the most difficult problems with which this Committee will have to deal. I should like to conclude by saying that I personally firmly believe that a peaceful, honourable and final solution of these problems, based on reason, does exist; but it has to be earnestly sought, and I sincerely wish that this Committee, representing as it does all sections of opinion in both our countries, and under Lord Sankey's able and sympathetic guidance, will find that solution.

Mr. Joshi: I am grateful to the Prime Minister for giving me an opportunity to take part in the work of this Committee, and I am very grateful to you, Lord Chancellor, for giving me this opportunity at this early stage to place on record some of my views on the principles of the constitution which should be adopted for India. I am speaking in this Committee not as a constitutional lawyer nor as a constitutional professor, for the very good reason that I am neither the one nor the other. But, Lord Chancellor, I am speaking here as a humble representative of the working classes of India, and I shall speak with that amount of common sense with which I am endowed, and with that knowledge of the mind and the heart of the working classes of my country that I have acquired.

At the outset let me welcome the fact that, after all, we are going to have in India one national government for the whole of

India. We welcome the formation of the Federation. We welcome the proposal that the Indian States are to join in the constitution of all India. We fully appreciate the action of the Princes gathered round this table in showing their willingness to join in a common constitution for the whole of India. We fully appreciate the wisdom with which, both in self-interest and out of patriotism, they showed willingness to join in framing a common constitution. Let me assure Their Highnesses who are gathered here that we have no desire to dictate to them as to what administration they should have for their internal affairs. If we refer to some matters which they may consider as interference it is due to the fact that, just as they themselves made it quite clear that they would like to federate with self-governing British India, so we too may desire to federate with self-governing British India, so we too may desire to federate therefore, that we have absolutely no desire to interfere with their internal affairs; and I would appeal to them not to misunderstand us but to appreciate the point of view which we propose to place before this Committee.

Let me also say that when we begin to frame a constitution—a joint constitution for British India and for Indian India—let us start with full mutual confidence. Let us not say at the outset that we shall start with only a limited confidence and leave it to time for the development of fuller confidence. I believe, Sir, that if we ourselves feel to-day that we cannot place the fullest confidence in each other, we shall not succeed in framing a constitution which will be acceptable to all sides. I therefore appeal to all here to start out work with the fullest mutual confidence.

Sir, if during the course of discussion in this Committee, some members feel that certain members are impatient, let me assure them of one thing, that our impatience is born of one desire; and that desire is that, when we start our new constitution, for some years to come we should have the fullest opportunity for constructive work for the people of India. Some of us believe more in constructive work than in anything else. We therefore feel that, when we are framing a constitution, we should not start with the idea that an agitation will take place and developments arise and that things which we do not get to-day may be obtained in a few years' time. I believe, Sir, that that is a wrong method of proceeding. When we are framing a constitution let us frame a constitution which will not require great agitation within a very short time. Let us get some breathing space to do constructive work which many of us want to do for the people of our country.

If we want a real national government for all India, I feel that that national government should be the sovereign or the supreme authority in the land. I do not think it will be for the good of India if all the constituent elements claim to be the sovereign or the supreme authority in the land and only show a desire to make common cause for a limited purpose. I believe that, if India is to

derive good from a national constitution, those who form the c stituent parts of that India should regard the federal or the natio government as the sovereign or the supreme authority.

I also feel that, if we are to have a real national or federal go ernment, we must have a common citizenship. To me a feder government or a national government for the whole of India with out a common citizenship, or with different citizenships, is no thinkable. I therefore feel that, if we are going to frame a constitution for the whole of India, that constitution should provide that there shall be a common citizenship—a common Indian citizenship for the whole country. I need not, at this stage, mention what will constitute a common citizenship. I may say that common citizenship ordinarily will be constituted by people living under a common law, by people who can go from one part of the country to another without losing their citizenship.

Sir, at this stage I do not wish to go into the details of the constitution, but let me say a few words on the main principles. With real federation there must be a desire on the part of the constituent parts to surrender not as little as they dare but as much as they can to the central authority. If we start with this principle, I feel that the distinction which is made between Central and Federal subjects will be found to be unnecessary. I feel that subjects which are regarded as being suitable by their very nature to be Central should all be Federal, because after a good deal of experience and discussion it has been found that these subjects cannot be Provincial; and if they cannot be Provincial, in my humble judgment they should all be Federal if we are going to have a real Federation for the whole country.

Without going into the detailed list of Federal subjects, I would suggest here that, out of the subjects which are not yet made Federal, I should mention the criminal law. A federation without a common criminal law, in my judgment, will not be a real federation.

Coming to the subject in which I am especially interested, it is also necessary for me to state that I feel that a federation which will not be able to legislate on labour matters will be a federation in which the working classes of the country cannot be expected to be much interested. Similarly, we would like, from the point of view of the working classes, that the federation should be in a position to consider the ratification of international conventions on labour subjects.

The second point upon which I would touch at this stage as regards the federation is that we are anxious, when framing a constitution for the federation and for a national government, that hat constitution should be as democratic as we can make it. The onstitution should represent the will of the common people of the untry. For this purpose we would like the legislative organism to be fully elected. I again assure Their Highnesses on this int that we have no desire to dictate to them what form of admin-

istration they should have within their territories; but they will not misunderstand us if we expect that the responsible government in India should not be watered down by the lack of responsible government within the territories of the Princes. We would like that the executive government should be thoroughly and fully responsible only to the popular legislative body. We would also like that the financial responsibility should be the sole concern of the popular Chamber.

There is one point which I should mention at this stage, because I feel it is necessary that our attitude on the main points should be made clear, and that point is the claim made by Their Highnesses for weighted representation in the legislative bodies. I feel that it is difficult for any one unit of a federation to give weightage to any others. The federation is going to be formed by various units that are willing to federate. It is not a federation of British India with Indian States—two parts organised fully into their separate organisations. It is a federation of many federating units. I do not wish to speak at length on this point, but I thought it was necessary that my attitude on this question should be made clear at the very start.

I do not wish, Lord Chancellor, to speak on other points, at this stage, which are contained in the Report of the Federal Structure sub-Committee. I fully share the views of Sir Tej Bahadur Sapru and Mr. V. S. Srinivasa Sastri on many points which are contained in the Report. In conclusion, I am very thankful to you for giving me this opportunity of speaking.

H.H. The Maharaja of Rewa: My Lord Chancellor and Gentlemen, As a new member of the Federal Structure Committee, I should like to join my other colleagues in thanking you for the welcome you have extended to those of us who for the first time have had the privilege of being called upon to serve on the Federal Structure Committee.

I am sure it will be within the recollection of all those gentlemen who gathered round this table some eight months ago, that even though different interpretations may have been given to my previous two speeches, I said nothing more and nothing less than this, that we should proceed with due caution and sound conviction. The one point, however, upon which I laid stress in the same speech was that the relations of the States with the Crown are individual; and I venture to repeat this statement now because on this basic principle my views remain unchanged. Since my return to India last February I have had the privilege of discussing the future constitutional problems with my brother Princes and eminent politicians of British India, and I have been assured on many occasions that my friends of British India do appreciate that our good will towards them and our firm resolve to serve our Motherland are facts beyond doubt. I have also been assured that our friends in British India do fully recognise the sanctity of Treaties and of our sovereignty. No one is more anxious than myself

to see all our difficulties solved. To restore peace and hap to India in such a way that all the interests are duly safegu is the aim of us all. And, notwithstanding the many diffic which confront us I feel sure that on this main issue, the adv ment of India, we are all in accord. The spirit of compromise mutual trust is, I feel sure, a very real necessity in order to br our deliberations to a happy and lasting conclusion.

I feel that the responsibility of representing the conservati point of view among the States, which has fallen upon me, is delicate one, and I should like to say a few more words before I close. We all realise full well the difficulties of one another, and we should therefore strive hard to evolve a constitution which will not only be impressive to look at but will also be practical, workable, and, above all, acceptable to all concerned. I trust with your valued assistance, My Lord Chancellor, we shall reach a conclusion that will not only bring peace and prosperity to India, but will be a tower of strength to the great Commonwealth of Nations over which our beloved King-Emperor reigns.

Sir Provash Chunder Mitter: Sir, As a new member of the Federal Structure Committee I am thankful to you for giving me this opportunity of expressing my views with regard to the deliberations of this Committee in session. I may begin by saying that I do not propose to take up much of the time of this Committee, but I desire to make a few general observations on the picture as it emerges from the Report last year. Then I desire to draw the attention of my fellow members to certain points to which, in my humble judgment, we should give pointed attention.

I believe, Sir, we should approach the question of federation from one point and one point only, namely, what is most conducive to the peace and happiness of India, and how to attain that very great object by methods of persuasion and peaceful discussion rather than by direct methods; or, in other words, by constitutional evolution rather than by strife in the physical sense between the citizens of that great country which I have the honour and privilege to represent to-day and the citizens of your country. Approaching the question from that broad aspect, I may at once say that I feel attracted by the kind of federation that was suggested during the last Session—not that I do not find anomalies and difficulties; not that I say that the broad outlines of the scheme that as suggested (and they are only broad outlines) are free from any difficulties and anomalies; but I hope and trust that the mbers of all the Delegations to this Committee, British and lian, will strive to attain what you, Sir, suggested last Monday nanimity. And, in my humble judgment, the coping stone of unanimity should be the interest of India first, and, next to nterest of India, the interest of Great Britain as the head of ederation of the British Commonwealth of Nations which Indians are anxious to join as an equal partner.

Beyond giving this general approval I desire to reserve my opinion on all questions of detail because some of these questions of detail are of paramount importance. I will next proceed to mention some points that strike me as being matters requiring special consideration.

The first point to which I would like to draw the attention of this Committee is this. It was suggested that the Ministry constituting the Federal Executive will be removable on a vote of two-thirds passed by the Joint Session of both Houses. It will be necessary to come to definite conclusions as to what the position will be if the Budget is thrown out by a bare majority, or if the Ministry fail to pass an essential measure because of the vote of a bare majority, although the critics of the Ministry may not be able to obtain a two-thirds majority of both Houses. As regards the Budget, it was suggested, amongst others I think, by my esteemed friend Sir Tej Bahadur Sapru, who did so much to bring about a new picture last session, that we may follow the Japanese Constitution, namely, that the previous year's Budget will be automatically restored. That may serve our purposes in a good many cases; but even then difficulties may arise, because the sum voted in the previous year on occasions may not be sufficient for the essential demands of the administration. As regards failure to pass an essential measure, the procedure of the Japanese Constitution does not help us. If the Executive composing the Ministry be removable by a two-thirds majority of both Houses, and if they are unable to pass an essential measure, it is not difficult to perceive that some very anomalous positions may arise. Whatever may be the conclusion at which you ultimately arrive, this point requires very careful consideration, because we must have a constitution which will work even under difficulties.

Another point which I think we may well discuss is the position of the Ministry with regard to subjects, on the one hand, which are predominantly British Indian, and, on the other hand, with regard to subjects in which the Indian States may take a predominant interest. It has been suggested that the representatives of the Indian States would not ordinarily take part in discussing and voting on British Indian subjects, and, similarly, presumably, the representatives of British India should adopt the same attitude with regard to subjects which predominantly affect the Indian States. On the question of a motion of no-confidence, however, both sides, I assume, have to discuss and take part in the voting. I do not think I am called upon to develop the point further at this stage, but one can well understand the implications of the point mentioned. That point also we have to consider, and as to it we have to come to a workable decision.

I find, Sir, from the heads of discussion that were referred to the sub-Committee last Session that the question of the distribution of the financial resources between the Federal and the Provincial Governments did not directly arise. I am glad to note that it is

now sought to remedy this omission. In this connection I like to stress the importance of leaving sufficient resources to Provincial Governments. The Federal Government no doubt sh have adequate financial resources for the due discharge of the ponsibilities cast upon it; but, subject to that condition, ev effort should be made to improve the finances and resources of Provincial Governments. The position, Sir, in this connection, Income-tax as a source of revenue to the Federal Government h an important bearing. I am glad to note that you, Sir, pointe out at page 30 of the Report that your provisional opinion was that Income-tax in a federated India should become provincialised and should not be used for financing the administration of the Federal Departments. It has been pointed out in the Simon Commission's Report that the average income of an Indian citizen is only about £6 a year, whereas the average income of a citizen of this country is £100 a year. Many students of Indian economics are of opinion that the average income of an Indian citizen is much less than £6 a year, but even if the average income be £6, what must be the income of 90 per cent. of the population who are admittedly very, very poor indeed? You in this country, with your problems of unemployment and allowing your masses a reasonable standard of living, ought to realise what it must mean to men who have to exist—I do not say live—on say £2 or £3 a year. In this connection, Sir, I hope the members of this Committee will bear in mind the importance of setting free as much of the Income-tax as possible for improving the human unit in that part of the world—India—which I can call my home. If we desire to approach this question from a statesmanlike point of view, we have to come to the conclusion—there is no escape from the conclusion—that these Provincial Governments which will be charged with improving the human unit in the Indian nation should have more money than it has been possible for them to have in the past

The Simon Commission's Report has further pointed out that whereas the expenditure on education in this country is £2 15*s.* 0*d.* per head, it is only 9*d.* per head in my unfortunate country. The expenditure on sanitation, agriculture, and cottage industries is even far less. With better resources, the Provincial Governments will be in a position to improve the material, the intellectual and the moral condition of the masses and truly lay the foundation of National Government in a country like ours, predominantly agricultural and poor. That is a problem which you must always bear mind.

I desire next to draw attention to the question of setting up a preme Court. If the Supreme Court be set up, should its powers functions be limited to questions arising out of constitutional utes only, or should it also have power to deal with appeals in rdinary civil and criminal cases? In that connection the question will naturally arise as to whether the Judicial Committee here l retain its present jurisdiction or not. I express no opinion stage on that point. I know that no final conclusion has

is nobody here or elsewhere who would be disposed
Mr. Gandhi's claim (not that he makes it), or to be litt
he has rendered inestimable services to his country and to
munity during the last two decades or so. One feels there
the circle of the Round Table is now complete, and that
go forward toward the conclusion of our task without a
giving that the vast and noble edifice that we hope to be
raise as the result of our labours here shall not afford ad
shelter to all the various interests and all the teeming milli
India.

My Lord, I do not propose to make a general speech with re
to the various principles involved in the framing of a constitu
more particularly a constitution for a country like India. I des
with your permission, to confine myself to submitting certain obs
vations with reference to the matters actually dealt with in the t
Reports of the Federal Structure sub-Committee, in which a
embodied the conclusions arrived at by the sub-Committee durin
its sittings in the last Session. Happily, for what I have got t
say I shall be able to find for the greater part of those observations,
not only the material but also the language that I wish to employ,
within the body of those Reports. This may involve a certain
amount of reference to, and perhaps a little repetition of, the contents of the Reports. But having regard to the fact that I had not the honour to take part in the discussions of this Committee in its last Session, I am sure you and my fellow members of this Committee will bear with me and will extend to me the indulgence of listening to those repetitions

Before I go on to submit my observations, I wish to stress some of the reservations which are already contained in those Reports. I agree entirely with the view that, in devising the details of the constitution of India, India's own practical needs and conditions must be the governing factors, and that no constitution, however theoretically perfect and however closely modelled upon precedents adopted elsewhere, is likely to survive the tests of experience, unless it conforms to the needs indigenous to the country which adopts it, and unless it is capable of modification as the character of those needs changes in the working of the constitution.

I may also, before I go on to submit my observations, claim the right claimed by other members of this Committee that, whatever I may submit this afternoon or during the subsequent course of discussions in this Committee, when I come to consider the complete proposals for the Federal Constitution I shall be at liberty to modify or change any provisional assent that I might in the earlier stages have given, and I shall have the right of modifying my opinion before the final picture is completed.

I wish also to emphasise more particularly the reservations with regard to the communal question to which expression was given in the sittings of the Committee last Session and has been given this morning. I associate myself with what was said by Sir

Muhammad Shafi and Mr. Jinnah during the first sittings of this Committee; and I wish to make it clear that, as far as I am concerned, I cannot consent finally to frame any constitution unless the Hindu-Muslim question is settled, and that, in my opinion, too, as Mr. Jinnah said, no constitution would work unless it embodied provisions which would give a sense of security to the Muslims and other minorities. To this I wish to add, in the words of the last paragraph of the Report of the Minorities sub-Committee, paragraph 18, that Muslims could not consent to any self-governing constitution for India unless their demands were met in a reasonable manner.

Subject to these reservations, I might proceed now to make those observations, the greater part of which will be in the nature of expressing a clear agreement or disagreement with the main conclusions arrived at during the earlier sittings of this Committee; and, with regard to matters as to which I have no definite opinion to offer, I shall reserve my opinion just as much as I reserve it naturally on questions to which discussion has not yet been directed.

I am in general agreement with the ideal that this Committee has laid down with regard to the future constitution of India, that is to say, the ideal of federation. I am also in general agreement that the component elements of this Federation shall, on the one hand, be the federating Provinces of British India, and, on the other hand, such Indian States or groups of States as may enter the Federation. I am compelled also by circumstances to agree to what is said in the fourth paragraph of the Interim Report, that, so far as British India is concerned, the federating organisation will be neither the Government of [illegible] India as it exists at present nor autonomous Provinces [illegible] the C[illegible]ie; but I do wish to give expression to [illegible] at, as [illegible], the Federal tie will take the place [illegible] al ti[illegible] rd to the matter referred to in pa[illegible] the [illegible] rt, one, of course [illegible] tes the una[illegible] High[illegible] in their opini[illegible] method by [illegible] ates' [illegible] should be [illegible] be a ma[illegible] ates [illegible] I express c[illegible] al opinion [illegible] lthou[illegible] I have ima[illegible] method [illegible] sent [illegible] e chosen for [illegible] egislat[illegible] wi[illegible] eminentl[illegible] cerned [illegible] n task of d[illegible] eral co[illegible] I attention in [illegible] to th[illegible] has been [illegible] shall [illegible] selves, in pa[illegible] Sec[illegible] tion that th[illegible] n [illegible] themselves, i[illegible]:

"Anu[illegible] h of the In[illegible] cti[illegible] ensure th[illegible] c[illegible]

As I have said before, on this question I at present express no final opinion.

With regard generally to the question of federation between British Provinces and Indian States, I have at present this observation to offer. We are all aware that in the Schedules and Appendices annexed to these two Reports there are certain subjects which have been described as Federal and there are certain subjects that have been described as Central. In one of the Schedules there are suggestions as to which of the Central subjects should immediately be provincialised. Mr. Joshi, I believe, has given expression to the view that, in course of time, he hopes to see all Central subjects federalised, inasmuch as experience has shown that all those subjects that are at present Central cannot be provincialised With all respect to Mr. Joshi, I am not willing to accept that statement. I too express the hope that in course of time there shall disappear that category of subjects which is described as Central, and that it shall disappear because some of the subjects have been federalised and the residuum have been provincialised. Here I feel a certain amount of difficulty, and the difficulty is this. With regard to some of these subjects, after a perusal of the printed report of the proceedings of this Committee I feel that Their Highnesses are not in any eventuality likely to agree to the administration of these subjects being federalised; and, if that is not done, then it follows that, unless that part of Central subjects is provincialised, we shall for ever have these three categories of Federal, Central and Provincial subjects, which I cannot readily accept as a permanent arrangement.

Coming to the Second Report and to the most important part of that Report, which is likely to engage the attention of this Committee for a considerable time, I accept generally the principle of responsibility of the Executive laid down in paragraph 8, as well as generally the definition of that responsibility laid down in paragraph 10; but I cannot in its entirety accept the method of providing for this responsibility laid down in paragraph 9. In this connection I would venture very respectfully to associate myself with the observations attributed to Lord Peel and Sir Samuel Hoare, contained in paragraph 2 of the Report. I am unconvinced that the kind of Executive envisaged in this Report can be successfully adapted to the special conditions of an all-India Federation. I therefore desire to see further explored methods for increasing Indian control over the Federal Government that are better suited to all-India needs than those founded upon British precedents alone. Although it is not my desire to adduce arguments to-day in support of the views that I am expressing, I might make reference to the fact that it is visualised that the Central Indian Cabinet shall have among its members representatives of the States as well as one or more Muslim member or members. That being so, I cannot see how this doctrine of the method of enforcing responsibility of the Executive to the Legislature upon the British model could be carried to its logical limit. As my friend and colleague Dr.

Shafa'at Ahmed Khan submitted this morning, situations may arise in which modifications of that doctrine in practice may become necessary.

With regard to the special powers of the Governor-General contained in paragraph 16, all that I wish to say at present is that I would desire to confine those powers within the very strictest limits of the phraseology employed in that paragraph.

With regard to the special provisions for finance contained in paragraph 18, I am not at present prepared to go beyond expressing my agreement with the fundamental condition for the success of the new constitution, which is that no room should be left for doubt as to the ability of India to maintain her financial stability and credit both at home and abroad.

My next observation relates to the second part of paragraph 26 of the Report, which is concerned with the method of election to the Upper Chamber. The opinion of the Sub-Committee is that the British Indian members of the Senate should be elected by the Provincial Legislatures, and I agree with that; but the Report goes on to lay down that this shall be done by the method of the single transferable vote. I am afraid that would be found impracticable, having regard to some of the safeguards that are considered essential by the minorities. If those safeguards are to be enforced the exercise of the single transferable vote may not be possible.

With regard to the very important matter dealt with in paragraph 28—the distribution of seats in the Upper Chamber—I do not at this moment wish to say anything more than this, that it must be clearly understood, with reference to these questions, that the component elements of the Federation have been described in this Report not as British India on the one hand and the Indian States, either individually or as one group, on the other, but as the British Provinces on the one hand and the Indian States on the other. In considering the question of whether any weightage should or should not be allowed to any group, that consideration must always be kept in mind. Under this combination there would not be any preponderant group. As I have said, I would always be prepared to consider with an unprejudiced and sympathetic mind any proposals that come up for discussion before this Committee, but I am not at present persuaded that what is laid down in this paragraph is a necessary result of federation between the Indian States and the Provinces of British India.

On the question of the means of securing stability for the Executive at the Centre, I would again not express any final opinion, except that I would be prepared to consider with sympathy any proposals which would secure the stability of the Executive without unduly interfering with the responsibility of the Executive towards the Legislature.

Finally, in connection with the control by the Federal Government over the Provincial Governments, I wish to say that al-

though, again under the stress of circumstances, it may be necessary to agree to a certain amount of control being exercised by the Federal Executive over the Provinces, as laid down in this paragraph, I would wish to restrict it to the strictest possible limits permitted by the phraseology employed in this paragraph, and I would resist any attempt to widen the scope of the interference. I agree that in matters affecting more than one Province of British India—and only in such matters—there must be some authority capable of resolving disputes and of co-ordinating policy when uniformity of policy is in the interests of India as a whole. I would not desire the Federal Executive to have any powers beyond those necessary to regulate or co-ordinate matters of this nature.

In conclusion, I should like to submit this. A question was put this morning as to whether the views that were being expressed from this corner of this rectangular table were the views of individual members or were views offered on behalf of those whom we have the honour to represent. In reply to that question, and as a matter of general information, I desire respectfully to submit that the views that have been expressed or which may be expressed from this corner of the table are views expressed on behalf of those whom we have the honour to represent.

I thank you, My Lord, and my fellow-members of the Committee, for your and their indulgence in according me a patient hearing.

Sir Maneckjee Dadabhoy : I also desire to express my gratitude to you for the opportunity you have given to newcomers to express their opinion on the work done at the last Session of the Federal Structure sub-Committee. This wise decision of yours, Lord Chancellor, resulted this morning in the eloquent, interesting and instructive speeches which we have heard.

My claims to participate in the discussions in this Conference are more or less of a slender character, except for the fact that I have been in close contact and close association with three distinct epochs in the legislative history of India. I have been associated with the Lansdowne Reforms, I have taken part in the Morley-Minto Reforms, and I have helped to work the Montagu-Chelmsford Reforms. It is the little experience which I have gained through a long period of stewardship in the Legislature of the Government of India which gives me some right to speak on this occasion.

I must first associate myself with the last speaker in expressing our gratitude to you, Lord Chancellor, for the great ability and skill with which you have guided the deliberations of this Committte. But for that spirit of moderation and sympathy which you have shown to every section represented here, the result might possibly have been very different.

Before I proceed to the discussion of certain subjects, I also wish to express my gratitude to the Prime Minister for inviting me to attend this Conference. I should also like to express my

satisfaction at seeing here two of our distinguished citizens—Mahatma Gandhi and my old esteemed and respected friend Pandit Madan Mohan Malaviya, co-operating in the deliberations of this Conference. I feel certain that Mahatma Gandhi's presence will enable us to come to some agreement, and I feel convinced that the strongest political party in India will have no occasion hereafter, even if the Mahatma is not in a position to obtain all that he wants, to assert that their views and opinions have not been listened to by the Conference. At any rate, whatever the ultimate judgment of this Conference may be, it cannot be said that the case of the Congress Party will go by default.

I must now come to a discussion of the real problem before us. We have now come to a unanimous decision on the question of a Federal Legislature. That question, to my mind, is now *res judicata*. That question must now be taken as a settled fact; and on that assumption I shall proceed to discuss some of the points involved in the Reports of the Federal Structure sub-Committee.

At the same time, I would be acting as a hypocrite if I failed to state that I am neither enamoured of nor in ecstasy about the formation of a Federal Legislature. I fully realise and can visualise difficulties in the successful working of a Federal constitution from my past experience of politics in India. The success of a Federal constitution will not only depend on the efficiency with which we draft a new law constituting the Federal Assembly, but it will very considerably depend on the harmonious working of that constitution. We cannot fall back upon the precedents of other countries where federal legislature have been established. We cannot fall back on the British parliamentary system to find a solution in the case of India. The peculiar circumstances of India, the divergent interests, the conflicting religions and conflicting ambitions of the people, make the task more difficult and more onerous. It is in that way that I look upon the proposed Federal constitution; and if I am not enamoured of it, and if I do not feel in ecstasy over it, it should be realised that, at this stage, I do not propose in any way to withhold my support from it. I am quite prepared to give my adhesion to the new constitution, based, as it is, on the co-operation of the Indian States, my British Indian countrymen and the Crown. But in the new constitution which we shall have to work, a great deal of mutual concessions and mutual sacrifice and mutual trust will be necessary; and if a constitution is to be framed which shall result in successful working, it will be necessary that, above all, there should be complete trust by one party in another party. The present conflicting elements which have divided the administration of India up to now will have to be discarded. It is in that light that I feel gratified that the Princes have agreed to come into this great Federal constitution and have thus saved a really critical situation. I admire the self-sacrifice; I admire the patriotism of the Princes in coming into that Federation. It would not have been possible, in face of the Simon Commission's recommendations, to arrive at a unanimous constitution without the help of the Princes. I am not

ay that the Simon Commission was entirely un-
unjustified in coming to its conclusion and in not
responsibility in the Centre. There is a great deal
in what they have said; and, but for the events
ened lately, I personally would have been opposed
onstitution. But, Sir, the position has been made
uent events. The Indian Central Committee recom-
measure of responsibility in the Centre. The Gov-
lia, despite its adverse opinion regarding the dyarchi-
Government and the opinions of all Provincial
against the dyarchical form of government, had in
to recommend a system of dyarchy in the Centre.
Iinister made it perfectly clear in the House of
er the dissolution of the last Session here, that what-
he position we shall have now, by hook or by crook, to
some measure of responsibility in the Centre. I will
l passage from the Prime Minister's speech delivered
of Commons. He stated:—

have come to the conclusion that even if British India
came into the confederation or the question had to be
dered by us, we should have had, by hook or by crook,
evise some means of giving some responsibility to the
ral Government."

ose are commendable words; and it is because I now
t is impossible in India to have any other form of govern-
ause I now feel that it is impossible in India to have any
between different parties and make any form of govern-
uccess, that I agree to this Federal constitution; and I
inced that my countrymen will not lag behind either in
n or in service to their country to see that, when the new
ion has been framed and settled, it is successfully worked.

i will depend on the action taken by this Government. I
it a very propitious time that we are met here during
nth. I consider that the great crisis which has involved
d, and which has resulted in the formation of a National
ment is a blessing in disguise. I feel certain that now the
ation of the three parties—the Conservative, the Liberal
e Labour Parties—will evolve a constitution during their
f office. They will hasten to form a constitution, because it
ectly clear that, if a constitution had been framed by one
Government, it would have been opposed by other Parties
rliament; but now, with the co-operation, sympathy and
of the combined three Parties, the future of India should
ly settled.

Lord, we must now proceed to action. In the work of
st Conference—and I may say that I have very closely
d the work of the last Conference, though I had not the
of being present—may I say that there was too much of
hing provisional in the proceedings at the last Conference.

The Conservative Party said: "We cannot say anything definitely just now; fill in the picture and then we will decide." The Liberal Party joined in the formation of a Federal structure conditionally. Not only is that so, but individual members whose speeches I have perused have all expressed provisional agreement. This sort of provisional agreement will not avail the country. We must now come to some satisfactory and immediate solution of the different problems that await discussion. Once we do so—once we come to something definite, something conclusive—we shall have gone far towards the accomplishment of our aim.

Sir, at the last Conference the Prime Minister, in his farewell speech, said:—

> "Now, we have gone as far as we can go at this moment. You have to go back to India; we have to go back to our own public opinon. You have spoken here subject to reconsideration, subject to the reaction which your public opinion will show to your work; we, Government and Parliamentary representatives alike, have spoken in the same way, and we must also listen to reactions. We must also explain and expound and defend; we must also make ourselves the champions of our findings, and do our best to bring our people along with us in our pilgrimage of hope to their conclusion."

But this work which all the Parties promised, I regret to state, has not yet come to fruition. Nothing has been done. I am not aware of the Princes having come to any definite conclusions regarding their numerical strength, regarding their representation in the Lower and Upper Houses, regarding the conditions under which they propose to enter the Federatoin.

Of course, they naturally made three cardinal conditions, and nobody could question the propriety of those conditions. The first was that the Federal scheme to be acceptable, must also guarantee the internal autonomy of the States and strict adherence to Treaty engagements; the second was adequate and effective representation of big and small States in the Federal Legislature; the third was reservation of personal and domestic matters of Rulers for decision by the Viceroy as [illegible] resentative of the [illegible] own. Those are the cardinal conditi[illegible] which the P[illegible] ld join the Federation. Nobod[illegible] oubt the p[illegible] those conditions. My friend on t[illegible] orning sp[illegible] nditions under which both par[illegible] come in. [illegible] at the States would not allow [illegible] with the [illegible] omy of their administrations. [illegible] right a[illegible] that British [illegible]ans should r[illegible] erence o[illegible] in matters domestic [illegible] India. [illegible] ame time, [illegible]d, I cann[illegible] stating [illegible] conclusion [illegible] on very [illegible] Suc[illegible] cannot be [illegible] any le[illegible] ces [illegible] oin with [illegible] ia in a [illegible] the [illegible] uences of

the Federal constitution and the actions of the Federal Government must have their effect on the Native States. Those influences must percolate through the framework of the Indian States. No Prince, however autocratic he may be, can prevent the penetration of these influences in his State. Therefore, if the Princes come into this Federation, they must come with open eyes; they must come with a decision and a determination to give, in time, the same powers, the same privileges and the same liberties to their own subjects. My Lord, I have not the slightest doubt that Rulling Princes like the Maharaja Gaekwar, the Maharaja of Bikaner and the Maharaja of Mysore, who have their own Legislative Councils and who work more or less on the lines laid down in the British Constitution, will be the first to realise these great difficulties and will extend to their subjects those powers and privileges of representation which are given to British Indian subjects. But I must state that, in matters of this character, for the harmonious working of a Federal Indian Legislature, it will be essential for the Princes to bear in mind that their subjects are made of the same human clay as the British Indian subjects, that they have got the same rights, ambitions and aspirations as the subjects in British India.

My Lord, there are one or two other matters on which I would like to say something. I know that I shall have other opportunities of speaking at considerable length on various important matters which will come up for discussion later on; but I want it to be distinctly understood that I shall give my adherence, my adhesion and support to this Federal constitution only on this distinct understanding—that the safeguards which were settled at the last Session are religiously and scrupulously observed. My friend, Mr. Rangaswami Iyengar, spoke this morning about financial safeguards, and referred to that famous document, the Irwin-Gandhi Pact. He said that there is a clause in that document which says that the safeguards should be in Indian interests. My Lord, any man acquainted with finance, any man who really knows the operations of the laws of finance, any person who understands the intimate connection between England and India in the matter of finance, will state that it is simply a jugglery of words to say that Indian interests are different from British interests. I for one say that there is no difference at all between British and Indian interests; they are indentical to my mind; the one cannot exist without the other. Indian financial safeguards will be necessary both in the interests of England and of India. It is quite a different matter if my friend had on his mind ideas as to tariffs or customs duties. The whole or the major portion—90 per cent.—of our Indian debt is productive debt, such as for railways, irrigation and other public works. Those works have been undertaken largely with British capital. We need the service of British capital for the advancement of India; and if any constitution is framed which overlooks this important fact, which makes any difference between these two interests, that constitution is bound to come to grief. Unless there is mutual co-operation,

If, however, for any unfortunate reason we are not able to come to a settlement, I appeal to the British Government not to allow this question of the framing of a new constitution to be postponed. I hope that the British National Government or the British Parliament will come in, if necessary, as an arbitrator, and that whatever is just and right for both parties, whatever in justice ought to be done for them, your National Government will recommend, so that we may have a solution which, in the existing conflict of opinion, will be appropriate and advantageous.

These important problems can be approached only in that spirit. It is in that way and along that line of examination that we can make a real advance in framing a constitution for India. It is for these reasons that I feel certain our differences will be forgotten, and that we shall come to a settlement in all matters which will be worthy of our cause and which will lead India on the road to progress and advancement.

(The Committee adjourned at 3-30 p.m.)

PROCEEDINGS OF THE TWENTY-SECOND MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON TUESDAY, THE 15TH SEPTEMBER, 1931, AT 11 A.M.

Preliminary—concld.

Mr. Gandhi : Lord Chancellor, Your Highnesses and friends, I must confess at the outset that I am not a little embarrassed in having to state before you the position of the Indian National Congress. I would like to say that I have come to London to attend this Committee, as also the Round Table Conference when the proper time comes, absolutely in the spirit of co-operation, and to strive to my utmost to find points of agreement. I would like also to give this assurance to His Majesty's Government that at no stage is it, or will it be, my desire to embarrass authority; and I would like to give the same assurance to my colleagues here, that however much we may differ about our view-points I shall not obstruct them in any shape or form. My position, therefore, here depends entirely upon your good will, as also the good will of His Majesty's Government. If at any time I found that I could not be of any useful service to the Conference I would not hesitate to withdraw myself from it. I can also say to those who are responsible for the management of this Committee and the Conference that they have only to give a sign and I should have no hesitation in withdrawing.

I am obliged to make these remarks because I know that there are fundamental differences of opinion between the Government and the Congress, and it is possible that there are vital differences between my colleagues and myself. There is also a limitation under which I shall be working: I am but a poor humble agent acting on behalf of the Indian National Congress. And it might

be as well to remind ourselves of what the Congress stands for and what it is. You will then extend your sympathy to me, because I know that the burden that rests upon my shoulders is really very great. The Congress is, if I am not mistaken, the oldest political organisation we have in India. It has had nearly 50 years of life, during which period it has, without any interruption, held its annual session. It is what it means—national. It represents no particular community, no particular class, no particular interest. It claims to represent all Indian interests and all classes. It is a matter of the greatest pleasure to me to state that it was first conceived in an English brain: Allan Octavius Hume we knew as the father of the Congress. It was nursed by two great Parsees, Pheroze Shah Mehta and Dadabhai Naoroji, whom all India delighted to recognise as its Grand Old Man. From the very commencement the Congress had Mussulmans, Christians, Anglo-Indians—I might say all the religions, sects, creeds—represented upon it more or less fully. The late Badruddin Trebji identified himself with the Congress. We have had Mussulmans as Presidents of the Congress, and Parsees undoubtedly. I can recall at least one Indian Christian at the present moment, W. C. Bonnerji. Kalicharan Bannerji, than whom I have not had the privilege of knowing a purer Indian, was also thoroughly identified with the Congress. I miss, as I have no doubt all of you miss, the presence in our midst of Mr. K. T. Paul. Although—I do not know, but so far as I know—he never officially belonged to the Congress, he was a nationalist to the full. As you know, the late Maulana Muhammad Ali, whose presence also we miss to-day, was a President of the Congress, and at present we have four Mussulmans as members of the Working Committee, which consists of 15 members. We have had women as our presidents: Dr. Annie Besant was the first, and Mrs. Sarojini Naidu followed; we have her as a member of the Working Committee also. And so, if we have no distinctions of class or creed, we have no distinctions of sex either.

The Congress has, from its very commencement, taken up the cause of the so-called "Untouchables". There was a time when the Congress had at every annual session as its adjunct the Social Conference, to which the late Ranade dedicated his energies, among his many other activities. Headed by him you will find, in the programme of the Social Conference, reform in connection with the "Untouchables" taking a prominent place. But, in 1920, the Congress took a large step and brought in the question of the removal of untouchability as a plank on the political platform, making it an important item of the political programme. Just as the Congress considered Hindu-Muslim unity—thereby meaning unity amongst all the classes—to be indispensable for the attainment of Swaraj, so also did the Congress consider the removal of the curse of untouchability as an indispensable condition for the attainment of full freedom. The position the Congress took up in 1920 remains the same to-day; and so you will see the Congress

has attempted from its very beginning to be what it described itself to be, namely, national in every sense of the term.

If Your Highnesses will permit me to say so, in the very early stages the Congress took up your cause also. Let me remind this Committee that it was the Grand Old Man of India who sponsored the cause of Kashmir and Mysore; and these two great Houses, I venture in all humility to submit, owe not a little to the efforts of Dadabhai Naoroji and the Congress. Even up to now the Congress has endeavoured to serve the Princes of India by refraining from any interference in their domestic and internal affairs.

I hope, therefore, that this brief introduction that I thought fit to give will serve to enable the Committee, and those who are at all interested in the claims of the Congress, to understand that it has endeavoured to deserve the claim that it has made. It has failed, I know, often to live up to the claim; but I venture to submit that, if you were to examine the history of the Congress, you would find that it has more often succeeded, and progressively succeeded than failed. Above all, the Congress represents, in its essence, the dumb, semi-starved millions scattered over the length and breadth of the land in its 700,000 villages, no matter whether they come from what is called British India or what is called Indian India. Every interest which, in the opinion of the Congress, is worthy of protection, has to subserve the interests of these dumb millions; and so you do find now and again apparently a clash between several interests. But, if there is a genuine real clash, I have no hesitation in saying on behalf of the Congress that the Congress will sacrifice every interest for the sake of the interests of these dumb millons. It is, therefore, essentially a peasant organisation, and it is becoming so progressively. You will —even the Indian members of the Committee—perhaps be astonished to find that to-day the Congress, through its organisation, the All-India Spinners' Association, is finding work for nearly 50,000 women in nearly 2,000 villages, and these women are possibly 50 per cent. Mussulman women. Thousands of them belong to the so-called " Untouchable " class. We have thus, in this constructive manner, penetrated these villages, and the effort is being made to cover every one of the 700,000 villages. It is a superhuman task; but if human effort can do so, you will presently find the Congress covering all of these villages and bringing to them the message of the spinning wheel.

That being the representatve character of the Congress, you will not be astonished when I read to you the Congress mandate. I hope that it may not jar upon you. You may consider that the Congress is making a claim which is wholly untenable. Such as it is, I am here to put forth that claim on behalf of the Congress in the gentlest manner possible, but also in the firmest manner possible. I have come here to prosecute that claim with all the faith and energy that I can command. If you can convince me to the contrary and show that the claim is inimical to the interests of these dumb millions, I shall revise my opinion. I am open to

conviction, but even so I should have to ask my principles to consent to that revision before I could usefully act as the agent of the Congress.

At this stage I propose to read to you this mandate so that you can understand clearly the limitations imposed upon me. This was a resolution passed at the Karachi Congress:—

> "This Congress, having considered the provisional settlement between the Working Committee and the Government of India, endorses it, and desires to make it clear that the Congress goal of Purna Swaraj, meaning complete independence, remains intact. In the event of a way remaining otherwise open to the Congress to be represented at any Conference with the representatives of the British Government, the Congress Delegation will work for this goal: and in particular, so as to give the nation control over the Army, external affairs, finance, fiscal and economic policy, and to have scrutiny by an impartial tribunal of the financial transactions of the British Government in India, and to examine and assess the obligations to be undertaken by India or England and the right to either party to end the partnership at will: provided, however, that the Congress Delegation will be free to accept such adjustments as may be demonstrably necessary in the interests of India."

Then follows the appointment.

I have in the light of this mandate endeavoured, as carefully as I was capable, to study the provisional conclusions arrived at by the several sub-Committees appointed by the Round Table Conference. I have also carefully studied the Prime Minister's statement giving the considered policy of His Majesty's Government. I speak as subject to correction: but, so far as I have been able to understand this document, it falls far short of what is aimed at and claimed by the Congress. True, I have the liberty to accept such adjustments as may be demonstrably necessary in the interests of India, but they have all to be consistent with the fundamentals stated in this mandate.

I remind myself at this stage of the terms of what is to me a sacred settlement—the settlement arrived at at Delhi between the Government of India and the Congress. In that settlement the Congress has accepted the principle of federation, the principle that there should be responsibility at the Centre, and has accepted also the principle that there should be safeguards in so far as they may be necessary in the interests of India.

There was one phrase used yesterday, I forget by which Delegate, but it struck me very forcibly. He said, "We do not want a mere political constitution." I do not know that he gave that expression the same meaning that it immediately bore to me; but I immediately said to myself, this phrase has given me a good expression. It is true the Congress will not be—and, personally speaking, I myself would never be—satisfied with a mere political

constitution, which to read would seem to give India all it can possibly politically desire, but in reality would give her nothing. If we are intent upon complete independence it is not from any sense of arrogance; it is not because we want to parade before the universe that we have now severed all connection with the British people. Nothing of the kind. On the contrary, you find in this mandate itself that the Congress contemplates a partnership—the Congress contemplates a connecion with the British people—but that connection to be such as can exist between two absolute equals. Time was when I prided myself on being, and being called, a British subject. I have ceased for many years to call myself a British subject; I would far rather be called a rebel than a subject. But I have aspired—I still aspire—to be a citizen, not to the Empire, but in a Commonwealth; in a partnership if possible—if God wills it an indissoluble partnership—but not a partnership superimposed upon one nation by another. Hence you find here that the Congress claims that either party should have the right to sever the connection, to dissolve te partnership. It has got to be necessarily, therefore, of mutual benefit.

May I say—it may be irrelevant to the consideration, but not irrelevant to me—that, as I have said elesewhere, I can quite understand the responsible British statesmen to-day being wholly engrossed in domestic affairs, in trying to make two ends meet. We could not expect them to do anything less; and I wondered, even as I was sailing towards London whether we in the Committee at the present moment would not be a drag upon the British Ministers—whether we would not be interlopers. And yet I said to myself: It is possible that we might not be interlopers; it is possible that the British Ministers themselves might consider the proceedings of the Round Table Conference to be of primary importance even in terms of their domestic affairs.

India, yes, can be held by the sword! I do not for one moment doubt the ability of Britain to hold India under subjection through the sword. But what will conduce to the prosperity of Great Britain the economic freedom of Great Britain—in enslaved but a rebellious India, or an India an esteemed partner with Britain to share her sorrows, to take part side by side with Britain in her misfortunes? Yes! if need be, but at her own will, to fight side by side with Britain—not for the exploitation of a single race or a single human being on earth, but it may be conceivably for the good of the whole world! If I want freedom for my country, believe me, if I can possibly help it, I do not want that freedom in order that I, belonging to a nation which counts one-fifth of the human race, may exploit any other race upon earth or any single individual. If I want that freedom for my country, I would not be deserving of that freedom if I did not cherish and treasure the equal right of every other race, weak or strong, to the same freedom.

And so I said to myself whilst I was nearing the shores of your beautiful island: Perchance it might be possible for me to con-

connection with the safeguards also. But I think I have said quite enough in having, with some elaboration and with your generous indulgence, Lord Chancellor, taken the time of this Meeting. I had not intended really to take that time, but I felt that I could not possibly do justice to the cause that I have come to expound to you, the Committee, and to the British nation of which we, the Indian Delegates, are at present the guests, if I did not give you out of the whole of my heart my cherished wish even at this time. I would love to go away from the shores of the British Isles with the conviction that there was to be an honourable and equal partnership between Great Britain and India. I cannot do anything more than say that it will be my fervent prayer, during all the days that I live in your midst, that this consummation may be reached.

I thank you, Lord Chancellor, for the courtesy that you have extended to me in not stopping me, although I have taken close upon forty-five minutes. I was not entitled to all that indulgence, and I thank you once more.

Pandit M. M. Malaviya: My Lord Chancellor, I endorse all that Mahatma Gandhi has said, and I think this one sentence should suffice to express all that I wish to say at this moment; but, just to emphasise the importance of the view which he has presented, I might add a little more.

It was one of the most extraordinary things that ever happened when the inhabitants of this island established their domination over India. It was a most extraordinary thing that, by a combination of adverse circumstances, India, a great continent by itself, the inhabitants of which had ruled themselves for thousands of years in their own country, came under the domination of the people of a small island six thousand miles away. It was the more extraordinary that this took place, because the people of this island have always stood for liberty. They have fought for the liberty of many peoples in different parts of the world; and that they should establish, and so long maintain, a domination over a great continent like India has, I submit, been an extraordinary event.

What has happened during all these years is known and has been recapitulated by Mahatma Gandhi. For forty-five years at least the Indian National Congress has been urging that India should have the right to govern itself. The Congress was established in 1885, and since then it has been asking that the representatives of the people should have charge of the administration of their affairs. It took a long time for the British Government to agree to introduce representative institutions in India. We had two reforms during the time of Lord Landsdowne and Lord Morley, up to the year 1909. Then came the war, and the contributions which India made in men and money drew the appreciation of many English statesmen, and we then hoped that India would be placed on a footing of equality with the other self-governing Dominions of the British Empire. We were disappointed.

During the war, the services of India were most generously recognised. I need not remind the Committee of the many appreciative utterances made by English statesmen—by the late Lord Asquith, by Mr. Lloyd George and many other leading Englishmen who expressed their appreciation of the work done by India. As I have already said, we hoped at that time that India would be allowed to exercise the power of administering her own affairs. Indeed, some of the utterances to which I have referred led us to hope that that would be so. Mr. Lloyd George, for example, said:—

> "The contribution of India has been splendid. The assistance they have given us in the most trying hours of this campaign has been incalculable in its value."

Lord Curzon stated that the Indian Expeditionary Force reached France in the nick of time, and that it helped to save the cause both of the Allies and of civilisation; and he added:—

> "The nature and value of their service can never be forgotten."

Mr. Lloyd George, speaking on another occasion, said:—

> "These young nations, the Dominions, fought bravely and contributed greatly and won their place at the council table. What is true of them is equally true of the great Empire of India, which helped us materially to win those brilliant victories which were the beginning of the disintegration of our foes. India's necessities must not be forgotten when the Peace Conference is reached. We have had four years of great brotherhood; let it not end there."

One would imagine that, after such utterances, India would be placed on a footing of equality with the self-governing Dominions of the British Empire. India was indeed made an original Member of the League of Nations, but that was a sort of comedy—that, not having freedom to govern itself, India should be called on to take part in the discussion and decision of affairs affecting the freedom of other countries, was somewhat incongruous. But this is by the way. The people of India felt very disappointed when the reforms of 1919 were introduced.

Your Lordship is aware that, simultaneously with the introduction of reforms, agitation was carried on very insistently for further changes to be introduced. From 1920 to 1930 we had ten years of very strong agitation. The Congress again and again asked for the introduction of full responsible government. The Government again and again put the matter off.

The convening of this Conference, after this long period of agitation, has raised in my mind the hope that the British Government are now prepared to establish full self-government in India. Apart from the utterances which we have read with great interest and gratitude, the fact of this Conference having been convened, and the fact, that the Congress has been asked to send

its representative, lead me to hope that the English people made up their minds now to admit us as equal partners i British Empire. I wish to emphasise this fact for the reason the situation demands that there shall be no more misunderstan about the matter. As I have said, the Congress has for forty years asked for full self-government. It is not likely that you satisfy the people of India with any measure which will fall sh of that. The country deserves to have that much recognition of capacity to govern itself and to administer its own affairs. I hop therefore that all those who are taking part in this Conference a representatives of the British Government and people will lool at the problems which confront us from that larger point of view. It is not a question of introducing some reform here and some reform there, of extending responsibility in one matter and a little power in another matter The time when the people could be satisfied with such small changes has long gone by.

Nobody who has not been in India during the last twelve months—nobody who has not seen the agitation that has been carried on, the huge meetings that have been held, attended by 100,000 people, or 50,000 people, or 30,000 people, the part that the women and the children have taken in the agitation—nobody who has not seen all this can form an idea of the new India of to-day, burning with a desire for freedom. And it is my earnest wish and prayer that all those who have it in their power to bring about a real change in the constitution should take a full recognition of this fact. This demands that the questions which have to be considered should be looked at from a large point of view.

I am very thankful to find that the question has been taken up in the spirit in which it has been taken up. I wish to make it clear that the demand of national India for the establishment of full self-government was independent of the part which the Ruling Princes took in this matter. We are very grateful to Their Highnesses for the far-sighted statesmanship with which they have acclaimed the idea of a federation. We welcome that idea; but it should be remembered that the demand of national India for the establishment of full Dominion Status was independent of the part which Their Highnesses and the Indian States have taken, and which I hope they will take in this matter. Even if Their Highnesses had not seen fit to join us in the discussion of a new constitution for India, and to take part in the promotion and the building up of a federation, even then the time demanded that full responsible government should be established in India. But now that they have come forward with great foresight and patriotism to do heir share in the building up of the new constitution, the path has een made clearer, and I hope that the questions that will now be nsidered by the Committee and the Conference will be considered om the point of view that full Dominion Status has to be estabhed. If that fact is recognised, then the discussion of the other stions will become easier. The reservations and the safeguards then come in for consideration in their proper order and time:

spite of our protests. The Civil expenditure has also been maintained at a high figure. Not only that, but it has been enhanced by the Lee Commission grants during the last few years. India has now come to a crisis when it is not possible for the Government of India to carry on their administration with the existing scale of salaries. You must have read in to-day's "Times" the report of the speech made by His Excellency the Viceroy in India. The Government of India are busy trying to retrench expenditure; but I submit, My Lord Chancellor, that the Government of India do not possess the power and cannot have the outlook which are needed in order that a retrenchment of expenditure, such as the situation calls for, should be undertaken.

Unfortunately, you yourselves are passing through a great national crisis. We all sympathise with you in your troubles. We earnestly hope and pray that you may soon get over them, and we admire the spirit in which you have met the situation. We admire the spirit in which the National Government has been formed, and in which the most outstanding personalities in each Party have come forward to put their shoulders to the wheel and to pilot the ship of State through the troubled waters in which it has found itself. It is such a National Government alone which can think of and carry out a large policy of revision of expenditure. It is not possible for the Government of India as it is constituted to-day to do that work, and in order that that work should be done rightly, in order that the relief which is due to the Indian people should be secured to them, in order that the reductions should be large and should enable the Government of India to carry on its administration without facing bankruptcy from day to day, it is necessary that the representatives of the people of India should be allowed to exercise the power to administer their own financial affairs.

This combination of the economic and political aspects of the case makes it imperative that the constitution which we are thinking of preparing should be one in which the representatives of the people, chosen by the people and trusted by the people, should have the charge of the administration of the financial affairs of the country. Once this view is adopted, the question of reservations and safeguards will require to be considered over again. Among the reservations, I notice, first stands the Army expenditure. Now, there was a time, not many years ago, when many Indians were prepared that the administration of the Army should be in charge of the Viceroy for some time to come. To-day the position is different. To-day the feeling is general and widespread that, if India is to have a fair chance to prosper, the Army expenditure must be cut down ruthlessly. That expenditure is sitting like a upas tree upon the Indian vegetation. It prevents India from doing many things which are necessary to build up the national strength of the people. I do not wish to go much into detail at this moment; but I wish to remind the Committee that, in that expenditure, the cost of the British troops forms an important and heavy item. Now, British troops have existed in India for a long time, but we

have protested during all that time that those troops were not needed. We have got an Indian Army consisting of 150,000 of the best soldiers, officered by British officers. I am not speaking of that Army; we wish to leave that Army as it stands, so far as numbers are concerned, but with such improvements and changes as may be necessary. But so far as the British troops in India are concerned, that is an Army against which protests have long been made, that it was really a part of the British reserves kept in India for which India was unjustly made to pay. I ask all my British friends to look at this question in a dispassionate light. There is no desire to get rid of the British Officers of the Indian Army immediately. As I have said, so far as the Indian Army is concerned, they will continue to work, and I hope we shall work together for a long time. But so far as the British troops are concerned, that is a matter that requires consideration, for it affects expenditure to a very large extent. You have the question of disarmament before you, and I hope, along with that question, you will consider whether, in fairness to India, the British troops should not be recalled—whether they should not be recalled at once or whether they should not be recalled in the course of a limited period which may be agreed upon. That, I submit, is a matter which requires consideration from the point of view which is now presented to us by the altered state of things both in India and in England.

As regards the financial safeguards, they, too, require fresh consideration from the point of view which I have mentioned. The change in India has been tremendous. The capacity of the people to bear further taxation is known to be now nil. They cannot continue to live under the existing conditions; and if there is to be any relief to them, a large reduction in expenditure will be necessary, both on the Military and on the Civil side. The question has been raised of controlling financial policy from the point of view of helping India to retain its credit. We shall all be very grateful to our British friends for any advice they will give us so that we may retain our credit and enhance it. Let me remind them, however, that we Indians understand our duty to our country, and we recognise that credit is important in the carrying on of any administration; and we shall not do anything which will impair that credit. On the contrary, we shall do everything that is reasonable in the interests of India to strengthen that credit. So also with regard to fiscal policy. What is needed is that we should not be asked to agree to certain proposals in the abstract, but that we should examine each matter on its own merit; and, where it is found to be in the interests of India that certain safeguards should be provided, we should all be very willing very thankfully to receive the advice which may be given to us and to discuss the matter. We shall either convince you or be convinced by you. In either case I hope there will be an understanding between us which will be a great asset in the situation.

There are other questions upon which I should like to touch, but I find the time is passing and I will therefore shorten what I

have protested during all that time that those troops were not needed. We have got an Indian Army consisting of 150,000 of the best soldiers, officered by British officers. I am not speaking of that Army; we wish to leave that Army as it stands, so far as numbers are concerned, but with such improvements and changes as may be necessary. But so far as the British troops in India are concerned, that is an Army against which protests have long been made, that it was really a part of the British reserves kept in India for which India was unjustly made to pay. I ask all my British friends to look at this question in a dispassionate light. There is no desire to get rid of the British Officers of the Indian Army immediately. As I have said, so far as the Indian Army is concerned, they will continue to work, and I hope we shall work together for a long time. But so far as the British troops are concerned, that is a matter that requires consideration, for it affects expenditure to a very large extent. You have the question of disarmament before you, and I hope, along with that question, you will consider whether, in fairness to India, the British troops should not be recalled—whether they should not be recalled at once or whether they should not be recalled in the course of a limited period which may be agreed upon. That, I submit, is a matter which requires consideration from the point of view which is now presented to us by the altered state of things both in India and in England.

As regards the financial safeguards, they, too, require fresh consideration from the point of view which I have mentioned. The change in India has been tremendous. The capacity of the people to bear further taxation is known to be now nil. They cannot continue to live under the existing conditions; and if there is to be any relief to them, a large reduction in expenditure will be necessary, both on the Military and on the Civil side. The question has been raised of controlling financial policy from the point of view of helping India to retain its credit. We shall all be very grateful to our British friends for any advice they will give us so that we may retain our credit and enhance it. Let me remind them, however, that we Indians understand our duty to our country, and we recognise that credit is important in the carrying on of any administration; and we shall not do anything which will impair that credit. On the contrary, we shall do everything that is reasonable in the interests of India to strengthen that credit. So also with regard to fiscal policy. What is needed is that we should not be asked to agree to certain proposals in the abstract, but that we should examine each matter on its own merit; and, where it is found to be in the interests of India that certain safeguards should be provided, we should all be very willing very thankfully to receive the advice which may be given to us and to discuss the matter. We shall either convince you or be convinced by you. In either case I hope there will be an understanding between us which will be a great asset in the situation.

There are other questions upon which I should like to touch, but I find the time is passing and I will therefore shorten what I

of the States in the proposed Federal Chambers; second, the method by which the Members constituting that representation should be appointed; and third, the division of subjects between the Federal Government and the individual Governments of the States and Provinces.

As regards the first problem, I would earnestly urge that some allowance in excess of a mere representation on the basis of population should be granted to the States in both the Federal Chambers. It is surely desirable that in a federation as many as possible of the federating Units should be individually represented. This principle was recognised in the great federations of the United States of America and of the German Empire. I do not, of course, claim that every Indian State, however small, can be individually represented; but it is certainly desirable that as many States as possible should be thus represented. Moreover, if we look at the question from another point of view, the federation is being formed from two great collections of units, the British Provinces and the States. It is, therefore, reasonable to ask that the representation in the Upper Chamber should be equally divided between the Provinces and the States. As regards the Lower House, I admit that the numbers must be based more largely upon population. But may I say that here also some advantage should be allowed to the States, for two reasons: firstly, that it is not desirable to put in a hopeless minority the States which, from their geographical position, do not include many populous cities; and, secondly, that the States are so scattered in a territorial sense that it is impossible for them to be conveniently represented on a population basis if the unit of population be not placed lower than would be necessary in the more compact and thickly populated British Indian Provinces.

As regards the second question—as to how the representatives of the States should be appointed—the States desire that this should be left for the decision of the Administrations of the States concerned. Personally I am entirely in favour of its being on as liberal a basis as possible; but any pressure on the States to adopt any particular form of selecting their representatives would in effect be an invasion of their sovereignty.

As regards the division of the subjects between the Federal Government and the Governments of the States and Provinces, the position of the States is very clear: they do not wish to interfere in the affairs of the Provinces and they do not wish the Provinces to interfere in their affairs. It follows that the subjects dealt with by the Federal Government should be as few as possible and should be strictly confined to the truly Federal sphere. The British Provinces aspire to form true autonomous units. This position of true autonomy the States already enjoy and must be allowed to retain. It may be necessary to have Central subjects for the British Provinces, but there is neither necessity nor justification for extending these subjects to the States.

My Lord, I recognise that these problems require full discussion and consideration. They also require that the Delegates from

cluded with the following words; and I regret to find that, even after the lapse of half a century I have still to conclude with the same words to-day: We have asked our British fellow subjects to help us to establish full responsible self-government in India. I hope the cause of liberty and right will now engage the attention of every honest Englishman in India and in England, and that every true Briton who values the rights, the privileges, the freedom, which have made him and his country what they are, will aid us, like a true Briton, to the fruition of our aspiration for equal rights, equal privileges and equal freedom.

H.H. The Chief of Sangli: My Lord Chancellor, I tender my grateful thanks to Your Lordship for the cordial welcome you have been pleased to extend to me along with our other colleagues who appear here for the first time as members of this Committee. I am much beholden to His Majesty's Government for the honour they have done me in inviting me to serve on this Committee. I esteem it as indeed a privilege that I should be permitted to participate in a discussion in which so many distinguished countrymen of mine are making their valued contributions.

I am especially glad of the opportunity afforded me, because I am here, not merely in a personal capacity, but as the representative of the States in general and of the smaller States in particular, which, though their individual resources may be small in comparison with those of the Provinces of British India and the larger States, are yet considerable in their aggregate extent—which, moreover, have a proud historical tradition behind them, cemented by Treaties and agreements with the Paramount Power; and which, from the very limitations of their size, have a form of administration more in touch with the daily life and interests of their subjects than is possible in the large States and Provinces.

The representatives of the States in general agreed last year in principle to enter federation with British India subject to certain safeguards, because they realised that in that way alone could the ideal of a united India be achieved. In that resolution I concurred, and to it I firmly adhere. And we have reason to be glad that the principle of federation has been so largely accepted by the Princes. It is, however, essential that the rights of the States should be adequately safeguarded. Their Rulers desire to lay stress upon this, as a condition precedent to federation, not only on account of their position and traditions, but also because the condition and degree of progress in the States vary very greatly. They are, therefore, glad that their British Indian friends appreciate the sacred character of the Treaties which they have concluded with the British Government. It must follow that any modification of the sovereignty of the Rulers can be made only with their consent.

I fully recognise that the union of the States and British Indian Provinces involves problems which can only be solved by mutual good will and concession. I would be inclined to refer only to three problems at this stage: first, the extent of the representation

Gentlemen, I have ventured to make these observations lest it should be thought that my silence implied in any way an acceptance of many of the very controversial propositions which have already been raised.

Lord Reading: I only wish to make one or two observations at this stage, following upon the remarks of the Secretary of State. First, however, may I be allowed to say with what deep interest I have listened to the speeches that were made by Mr. Gandhi and by Pandit Malaviya this morning. I do not intend for one moment to dwell upon the various points which they have raised: they will all come up for further detailed consideration as we proceed. It is, however, worthy of observation, I think, that they have introduced subjects, particularly in their more extended range of vision, which must be regarded by some of us as controversial; and that they have readily understood. It is an advantage that we have had the opportunity of listening to their views and of hearing what they have to say; and we trust that, when the discussion further proceeds in detail, they will—as I am sure they will—listen to our observations in just the same way as we have to theirs, and that we shall continue to speak not only with the utmost courtesy—that is certain here—but also with complete frankness.

I occupy now a somewhat different position from that which I held when the earlier sessions of the Conference took place, and I agree with what has fallen from the Secretary of State for India. I am now a member of the Government, but at the same time I am also a member of the Liberal Delegation, which was appointed to meet the other members of this Committee; and it may be difficult at times quite to realise in what particular position one is speaking. All I desire to say is that I endorse what the Secretary of State has said. Questions may be asked and arguments may be advanced, but it must not be assumed from that that we may not take up a different attitude should we be members of the Government which has to consider in the end the particular proposals which have to be made to Parliament. I do think it is important that in this assembly we should retain our individual independence, and more particularly that we should retain our independence as members of British Delegations, notwithstanding that we are for the present members of one National Government.

HEAD 2.

QUESTIONS CONNECTED WITH THE ELECTION OF MEMBERS OF THE FEDERAL LEGISLATURE.

The following points for discussion in connection with this Head were drafted by the Chairman:—

(i) *What is to be the method of selection for each Chamber of the Federal Legislature of the representatives—*

(a) *of individual States,*

(b) *of groups of States?*

British India should appreciate the peculiar rights, as well as the difficulties, of the States.

If goodwill is forthcoming on both sides, as I am sure it will, I feel no doubt that it will be possible, My Lord, under your distinguished Chairmanship, to realise the ideal that we all have at heart: a Federated India, which will derive strength from the fact that it unites, in a flexible yet firm union, Provinces and States of widely different individual character.

Sir Samuel Hoare: Lord Chancellor, I should like to say to my colleagues, first of all, that whenever I make an intervention in our discussions, you must not necessarily take it as a considered declaration on behalf of His Majesty's Government. I regard myself here as being in two capacities: first of all, as Secretary of State; and, secondly, as an individual member of this Committee. In the course of our discussions no doubt I shall express many provisional opinions, and I shall ask many questions that may not, when we come to see the whole picture, necessarily indicate the final and considered view of the Government as a whole.

The next observation I should like to make is to say how very glad I am to have heard the speeches of the new members of the Committee. It is all to the good that our Committee should be more fully representative of public opinion as a whole. It is also to the good, if I may say so, that every members of the Committee should freely express his own opinions, whether they differ or not from the opinions of his colleagues. I think, therefore, if I may say so, that it is truly satisfactory that we have had from the new members such a very frank expression of their opinions. Obviously the speeches to which we have listened have contained a number of very controversial issues. The new members themselves have not always agreed upon many important issues. Yet I do think it is all to the good that, at the very outset of our discussions, we should have had these differences of opinion clearly put before us. I take in particular the two principal speeches to which we have just listened this morning, Mr. Gandhi's speech and Pandit Malaviya's speech. They would not expect me to agree with a great many of their contentions; and if it were the stage of our deliberations in which we were going to involve ourselves in general arguments, I should attempt to make an answer to many of the statements they have made, and to put, in a very frank way, our counter point of view to the point of view that they have expressed.

But I suggest to you, Lord Chancellor, that this is not the occasion in our deliberations in which we should enter into a general controversy of this kind. I think it is much better to set aside the general principles that have formed so large a part of those two speeches, and to remember that we are a Committee with definite terms of reference, namely, to see whether we can work out the details of an all-India Federation within the British Empire—for those, after all, are our terms of reference. With that in mind we can proceed to the detailed discussion of the actual factors in the problem.

Gentlemen, I have ventured to make these observations lest it should be thought that my silence implied in any way an acceptance of many of the very controversial propositions which have already been raised.

Lord Reading: I only wish to make one or two observations at this stage, following upon the remarks of the Secretary of State. First, however, may I be allowed to say with what deep interest I have listened to the speeches that were made by Mr. Gandhi and by Pandit Malaviya this morning. I do not intend for one moment to dwell upon the various points which they have raised: they will all come up for further detailed consideration as we proceed. It is, however, worthy of observation, I think, that they have introduced subjects, particularly in their more extended range of vision, which must be regarded by some of us as controversial; and that they have readily understood. It is an advantage that we have had the opportunity of listening to their views and of hearing what they have to say; and we trust that, when the discussion further proceeds in detail, they will—as I am sure they will—listen to our observations in just the same way as we have to theirs, and that we shall continue to speak not only with the utmost courtesy—that is certain here—but also with complete frankness.

I occupy now a somewhat different position from that which I held when the earlier sessions of the Conference took place, and I agree with what has fallen from the Secretary of State for India I am now a member of the Government, but at the same time I am also a member of the Liberal Delegation, which was appointed to meet the other members of this Committee; and it may be difficult at times quite to realise in what particular position one is speaking. All I desire to say is that I endorse what the Secretary of State has said. Questions may be asked and arguments may be advanced, but it must not be assumed from that that we may not take up a different attitude should we be members of the Government which has to consider in the end the particular proposals which have to be made to Parliament. I do think it is important that in this assembly we should retain our individual independence, and more particularly that we should retain our independence as members of British Delegations, notwithstanding that we are for the present members of one National Government.

Head 2.

Questions connected with the Election of [illegible] Federal Legislature.

The following points for discussion in [illegible] Head were drafted by the Chairman:—

(i) *What is to be the method [illegible] of the Federal Legislature [illegible]—*

(a) *of individual [illegible]*

(b) *of groups of [illegible]*

(ii) *If the method of selection is to be nomination, by what method is a State's representative's seat to be vacated otherwise than by death or on dissolution?*

(iii) *Are the British Indian representatives in the Upper Chamber (other than those, if any, representing special interests), to be—*

(*a*) *directly elected by territorial constituencies,*

(*b*) *indirectly elected by the Lower Chamber,*

(*c*) *indirectly elected by the Provincial Legislatures?*

(iv) *Are the British Indian representatives in the Lower Chamber (other than those, if any, representing special interests), to be—*

(*a*) *directly elected by territorial constituencies,*

(*b*) *indirectly elected by the Provincial Legislatures,*

(*c*) *indirectly elected by any other method?*

(v) *Is provision to be made for the representation by special constituencies of special interests, other than communal interests, and if so, for which interests—*

(*a*) *in the Upper Chamber,*

(*b*) *in the Lower Chamber?*

(vi) *Are any special qualifications to be laid down for eligibility for membership of the Upper House?*

(vii) *What requirements, if any, are to be made in the matter of an Oath of Allegiance on assumption of a seat in either Chamber?*

(viii) *What provision, if any, shall be made in each Chamber for nominated members, and for what purposes?*

Chairman: I think the position now is that our preliminary discussion has come to an end, and we must now get down to details. Perhaps you will take in your hands the paper which has been circulated and turn to page 3 of it. In accordance with your wish, as expressed yesterday, we are going to begin with Head No. 2. I propose first of all—it will not take me more than a very few minutes—to draw your attention to those paragraphs in the Reports of the Federal Structure sub-Committee which deal to some extent with the questions to which you will now have to give a definite answer.

If you will take Head 2, you will see that the first question is:—

> "What is to be the method of selection for each Chamber of the Federal Legislature of the representatives—(*a*) of individual States, (*b*) of groups of States?"

Now will you please take the Report of the Federal Structure sub-Committee in your hands, because I shall have to refer you to one or two points and ask you to make notes for the discussion. If you

will turn to page 8 of the Report of the Federal Structure sub-Committee, you will see that paragraph 6 bears on it to some extent. Paragraph 6 says:—

> "The method whereby the representatives of British India are to be chosen was not referred to this sub-Committee, but Their Highnesses made it clear that, in their opinion, the method by which the States' representatives should be chosen will be a matter for the States themselves."

Now will you please turn to page *15 of the Report of the Federal* Structure sub-Committee. You will see that the question by this time was referred to us. Please look at the bottom of the page, where you will see it says:—

> "The further Heads which were referred to the sub-Committee and are now under discussion are:— . . . . (5) The method whereby representatives from British India and from the Indian States are to be chosen."

Will you please put against this item, therefore, the reference to the pages in the Report of the Federal Structure sub-Committee—page 8 and page 15. I will now ask you to turn to paragraph 26 on page 21 of the Report of the Federal Structure sub-Committee. The Federal Structure sub-Committee did not go very deeply into this question. If you will look at paragraph 26, the last sentence *of the first sub-paragraph, you will see that it says:*—

> "It was thought that this object might be secured by prescribing for the candidature of the British Indian members qualifications similar to those now in force for the Council of State: and the sub-Committee have no doubt that the Rulers of the Indian States, in *selecting their representatives,* will ensure that they are persons of similar standing."

Here comes the method of election to the Upper Chamber, and the Report says:—

> "The sub-Committee are almost unanimously of opinion that the British Indian *members of the Senate should* be elected by the Provincial Legislature, by the single transferable vote."

If you will now go to question (ii) of Head 2, you will see that it is this:—

> "If the *method of selection*"—(that is, selection by the States)—"is to be nomination, by what method is a State's representative's seat to be vacated otherwise than by death or on dissolution?"

That is a question which was not touched upon by the Federal Structure sub-Committee, and you will have to *consider it.*

Please turn now to the next page, where you will find question (iii). *We are now coming to the British Indian representatives in* the Upper Chamber, and the question is:—

> "Are the British Indian representatives *in the Upper* Chamber (other than those, if *any, representing* [illegible]

terests) to be—(*a*) directly elected by territorial constituencies, (*b*) indirectly elected by the Lower Chamber, (*c*) indirectly elected by the Provincial Legislatures?"

Will you place opposite to that, please, page 21 of the Federal Structure sub-Committee's Report, because I have just pointed out to you that the recommendation was that:—

> "The sub-Committee are almost unanimously of opinion that the British Indian members of the Senate should be elected by the Provincial Legislatures, by the single transferable vote."

Will you now please turn to (iv):—

> "Are the British Indian representatives in the Lower Chamber (other than those, if any, representing special interests), to be—(*a*) directly elected by territorial constituencies, (*b*) indirectly elected by the Provincial Legislatures, (*c*) indirectly elected by any other method?"

That is dealt with in paragraph 32 of the Federal Structure sub-Committee's Report on page 23. I am not going to read the whole of it; but I should be glad if you would put a note against question (iv)—that it is dealt with on page 23 in paragraph 32.

With regard to the next one, (v):—

> "Is provision to be made for the representation by special constituencies of special interests, other than communal interests and, if so, for which interests—
>
> (*a*) in the Upper Chamber,
>
> (*b*) in the Lower Chamber?"

I shall be glad if you will put against that paragraph 34. If you will just turn to it, it is on page 24; and that paragraph is headed "Representation of special interests and of the Crown in Federal Legislature."

The next question is:—

> "Are any special qualifications to be laid down for eligibility for membership of the Upper House?"

That is to some extent dealt with in paragraph 26 of the Federal Structure sub-Committee's Report, and I must just read it. It is on page 21:—

> "But proceeding simply on the basis that there will be two Chambers, the Upper smaller in size than the Lower, and without any decision as to the relations of one to the other, the balance of opinion was to the effect that the Upper Chamber—which might be described as the Senate—of the Federal Legislature should be a small body, of from 100 to 150 members, whose qualifications should be such as will ensure that it is a body of weight, experience and character."

If you would allow me, I would just like to give you a note about that, before I go on, with regard to the qualifications. I am

not saying that these are the proper qualifications; I am only just saying that they are some of the qualifications which obtain in other constitutions:—

> "The qualifications of a Senator should be as follows"—(I am not saying these are right, you know; I am only putting out suggestions)—"that he is to be not less than 25 years of age, except in the case of a Prince sitting in his own right; (2) that he is to be a British subject or a Ruler or subject of an Indian State; *and (3) either to be in possession* of specified property qualifications or to have been a member of either Chamber of the Indian Legislature as constituted by the Government of India Act, 1919, or of the Federal Legislature, or to possess such other qualifications as any Provincial or State Government may prescribe with a view to securing persons who have rendered distinguished public service."

Now, there is one question which I left out there, but which we shall perhaps have to consider at some time or other. It is all very well to talk about qualifications, but are there to be some disqualifications at times? Now, that is a matter which I do not propose to discuss at the moment. I have here a long note with regard to disqualifications which I can circulate later. The difficult point there—I am going to tell you all the difficulties at once, so that we may consider them—is disqualifications which it may or may not be thought wise to impose with regard to political offences. I am not giong to say more than that. I simply mention the fact to you.

Now, with regard to (vii):—

> "What requirements, if any, are to be made in the matter of an Oath of Allegiance on assumption of a seat in either Chamber?"

With regard to that, the Federal Structure sub-Committee did not make any recommendation; but it is usual to provide that members of a Legislative body should subscribe to an Oath or Affirmation of Allegiance. A provision of this character may raise difficulties in the case of an Indian Federation, particularly as regards the States. I have got a note about that which I will circulate in due course. I am not going to take up your time now. We have been very carefully into that matter; and later on, if you will allow me, I will put before you the various pros and cons.

Finally, (viii):—

> "What provision, if any, shall be made in each Chamber for nominated members, and for what purposes?"

That is dealt with in paragraph 34, if you will just put a note against it. It is on page 24 of the Federal Structure sub-Committee's Report:—"Representation of special interests and of the Crown in Federal Legislature."

Sir Tej Bahadur Sapru: My Lord, Chancellor, I am speaking with considerable diffidence, as I know that I am following the two

foremost leaders of present-day India. Mr. Gandhi has, in his speech this morning, put the Congress point of view in a manner in which no other living Indian could have done. He, if I may be permitted to say so, sums up in his unique personality the most burning passion for freedom in India and the highest form of patriotism. Pandit Malaviya's record of public service and dedication to the public affairs of his country extends over forty years. It may be that it is my misfortune that I have at the present moment not the honour to belong to the National Congress. Nevertheless, I am free to confess that, during my experience as a public man in India, I have never known any other two men who have commended the same confidence or respect of their countrymen as these two distinguished representatives on my right. Whether you agree or whether you do not agree with them, you have got to listen to them, to think over what they have said: and speaking for myself, My Lord, I venture to think that the note which Mr. Gandhi struck this morning is, notwithstanding the fact that it has introduced several controversial matters, one full of hope. I do not despair that, before this Conference is over, Mr. Gandhi, who can lead public movements as no one else has led them in other times, will have established his reputation all over the world, not merely as a great leader of public movements, but as a great constructive statesman. If I may be permitted to remind you all of what a famous statesman in philosophy said one: "It is only pygmies who destroy; it is giants who can build." I have not the least doubt that, notwithstanding anything that may be disturbing to the minds of certain members of this Conference or of this Committee in Mr. Gandhi's speech, you will find—it is my expectation and at any rate it is my hope—that Mr. Gandhi has got a great deal to contribute in the way of constructive statesmanship so far as this Conference is concerned.

My Lord, the critics of the last Session of the Round Table Conference in England and in India have not been few. The question has been broadly asked, both in your country and in my own country, whether the last Session of the Conference was at all a success. We have been told by some of our countrymen and by some of your countrymen—including among them men with long experience of administration in India, men who have occupied the position of Governor—that the last Session of the Conference was a failure, that it arrived at no definite conclusion; and they have ventured to prophesy that this Conference is also going to be a failure. Let me say with all respect that I do not share that view at all. If I were to point out one single element regarding the success of the last Conference, I would say no greater tribute to the work which we carried on last year and early this year could be paid than that those who withheld their co-operation last year should have this morning offered their co-operation in such a generous manner. Let those critics remember this always.

I have never for a moment thought that the task of constitution building, however pleasant it may be to theorists, is really an easy

one when you apply yourself to it in a practical fashion. No one need remind us of the difficulties that lie ahead. No one need tell us that we have in India a country where you have many religions and many traditions. We recognise that; we have always recognised that; but I feel sure that everyone of us here has come with a full determination that we shall not do anything which may widen those differences. On the contrary, we shall do everything that lies in our power—Hindu, Muslim, Sikh and Parsi—to bridge over those differences. I an encouraged in that hope by the presence of Mr. Gandhi; for whatever differences may divide you from him, or whatever differences may divide some of us from him, on one point I feel absolutely sure about Mr. Gandhi. The Mahatma is, has been, and I have no doubt will continue to be, absolutely non-communal in his outlook. With him, I feel sure, the freedom of India does not mean the freedom of the Hindus. It means the freedom of everyone who is in India, whatever be his nationality, whatever be his religion, and whatever be his creed. I have always maintained that one of the greatest duties which we are called upon to discharge at this Conference, if not the greatest, is so to arrange things that we may be able to say to the world that we have settled our domestic differences—that whatever differences may have divided us in the past, in the future they will not divide us. That will be the measure of our success; and, if we fail to arrive at such a conclusion in our work, I think failure will be written large on our foreheads. That is the view that I take. I feel confident that Mr. Gandhi will apply himself to this great task, and I have no doubt that he will have in an abundant manner the co-operation of my Muhammadan friends in the solution of this difficult task. Whatever be the constitution one thing is absolutely certain and we need not be reminded of it: that the position of the minorities, that the position of the Depressed Classes, the position of certain interests in India, in which I include the European trading community, have got to be protected. On that point I am absolutely clear. How they will be protected, and to what extent they will be protected, is a question which will come up at a later stage. I do not wish to raise any controversial issue on that point beyond saying that we have got to apply ourselves to that task, and the sooner we do apply ourselves to that task the better for the country.

There is only one other observation which I will permit myself to make, with your Lordship's indulgence, and it is this. In certain quarters it has been said that the constitution which we outlined at the last Session of the Conference was a mere camouflage; that it did not give any responsibility; that it was merely a cover or a cloak to hide autocratic powers. I absolutely deny that. We did not arrive at definite conclusions on the last occasion. That was not our object—that was not the method which we pursued. Our conclusions last year were of a tentative character. It was left open to everyone, Indian or English, to go back upon the conclusions in the light of the completed work. Therefore,

let no one say that the conclusions embodied in this Report, howsoever defective they may be, are absolutely final. I for one think that there is considerable room for improvement; but I do say that we succeeded in concentrating public attention on this point. And the more there is an expression of opinion on the various aspects of this point, the better it will be for the Conference as a whole.

In the few remarks that I am going to make on Head No. 2, I should not be understood to commit myself irrevocably to any of them. I am also proceeding in a tentative fashion, and my object to-day will be rather to provoke attention on this point and to elicit information. I reserve to myself—as everyone else has reserved to himself—the liberty of revising my own opinion, enlarging my own views on certain questions, and narrowing my views on other questions. I am only throwing out a few suggestions in the hope that they will be discussed on their merits and not treated as to be embodied in my final opinion.

(The Committee adjourned at 1-0 p.m. and resumed at 2-30 p.m.)

Sir Tej Bahadur Sapru: My Lord, before I come to a discussion of the various propositions under Head 2, I will crave Your Lordship's indulgence just for a moment to make one or two further preliminary observations.

I would venture to say that the idea of an all-India Federation which we worked out, without going into the minutest details, at the last Sessions, appears to me to have come to stay; there is no alternative to it of a serious character which has been put forward by anybody in India or in this country. Mahatma Gandhi referred to a clause in the Delhi Settlement; and it would appear to everybody who studies that clause carefully that, so far as the basic idea of an all-India Federation is concerned, there is no dispute over it. What the content of that idea will be is a matter for discussion and a matter for settlement. I cannot forget, however, that in certain high quarters an attempt has been made to discount this idea of an all-India Federation and to put forward the idea of a confederation of Indian States first. I do not propose to go into that question at this particular moment at any length; I am only making a passing reference to it.

There are only two submissions that I would like to make with regard to that idea of confederation. The idea of confederation is not, it appears to me, necessarily inconsistent with the idea of an all-India Federation that we put forward last year; but if the authors of that idea do think that by putting it forward they can prevent certain legal and constitutional consequences from following, then, with all respect, I venture to say they are gravely mistaken. Even if you have a confederation of British India in one block and of Indian States acting in another block, and you combine the two together and call the two a federation, those legal consequences are inevitable. I venture to submit that there is a tremendous amount of confusion in discussing this thing on the question of sovereignty, divided allegiance, nationality and things

of that kind. I shall deal with them as the occasion arises; but meanwhile I will venture to submit with all respect that, if there is any seriousness about it, I do hope that the idea of confederation will not be put forward as a block in our way. I personally think that if there are people, whether they belong to British India or to the Indian States, who do not like the idea of an all-India Federation or who are opposed to it, it is far better that they should frankly and courageously say. "We are opposed to the all-India Federation and we do not want it," rather than put *forward that idea as a block in our way.* That is the *only caveat* that I should enter at this particular moment.

Now, My Lord, with your permission, I shall take up the various items under Head No. 2. I regret that we departed from the order which was originally accepted by Your Lordship in the paper that you were pleased to circulate, and I feel it somewhat difficult to deal with Head No. 2 without dealing with Head No. 1; but I shall observe Your Lordship's ruling, and as far as possible will avoid going into matters which come under Head No. 1.

It is, however, impossible for me to deal effectively with the content of Head No. 2 without, in a general way, giving some sort of idea as to the composition of the Senates in various countries. I have prepared a statement, which I shall venture to read, just to show what the strength of the Senates in various countries is Most of my statement will be based upon standard text-books or books of reference which are easily available. I find that the Italian Senate consists of under 400 persons, and the method of recruitment is entirely by nomination. The Japanese House of Peers consists of 399 members, and the Spanish Upper House, as it existed until a few months ago, consisted of about 360. The French Senate consists of 314, the Swedish of 150 and the American of 96; and the American and Swedish Senates are wholly elected. The Canadian Senate consists of 96, wholly nominated The Danish Upper House has 76 members, the German Reichsrat has 68, the Netherlands 50, Switzerland 44, the Australian Upper House 36 and the South African 40. I will not refer to the others.

I wish also to mention one important point, namely, as to how the members of these Houses are appointed, either entirely by election, partly by nomination and partly by election, or wholly by nomination. Under the first heading, namely, the Houses which are entirely elected, come the United States, Australia, Switzerland, Denmark, the Netherlands, Sweden, Norway, the South American Republics, and Belgium, save for the presence of the Princes Royal. Under the second heading—Houses partly nominated and partly elected—you have South Africa, the Irish Free State and Spain, which was partly hereditary also. Under the third heading—Houses wholly nominated—you have Canada, Italy, New South Wales, Newfoundland and New Zealand.

There is only one other observation which I will venture to make at this stage, and it is this. Except, perhaps, in Japan and Italy,

let no one say that the conclusions embodied in this Report, howsoever defective they may be, are absolutely final. I for one think that there is considerable room for improvement; but I do say that we succeeded in concentrating public attention on this point. And the more there is an expression of opinion on the various aspects of this point, the better it will be for the Conference as a whole.

In the few remarks that I am going to make on Head No. 2, I should not be understood to commit myself irrevocably to any of them. I am also proceeding in a tentative fashion, and my object to-day will be rather to provoke attention on this point and to elicit information. I reserve to myself—as everyone else has reserved to himself—the liberty of revising my own opinion, enlarging my own views on certain questions, and narrowing my views on other questions. I am only throwing out a few suggestions in the hope that they will be discussed on their merits and not treated as to be embodied in my final opinion.

(*The Committee adjourned at 1-0 p.m. and resumed at 2-30 p.m.*)

Sir Tej Bahadur Sapru: My Lord, before I come to a discussion of the various propositions under Head 2, I will crave Your Lordship's indulgence just for a moment to make one or two further preliminary observations.

I would venture to say that the idea of an all-India Federation which we worked out, without going into the minutest details, at the last Sessions, appears to me to have come to stay; there is no alternative to it of a serious character which has been put forward by anybody in India or in this country. Mahatma Gandhi referred to a clause in the Delhi Settlement; and it would appear to everybody who studies that clause carefully that, so far as the basic idea of an all-India Federation is concerned, there is no dispute over it. What the content of that idea will be is a matter for discussion and a matter for settlement. I cannot forget, however, that in certain high quarters an attempt has been made to discount this idea of an all-India Federation and to put forward the idea of a confederation of Indian States first. I do not propose to go into that question at this particular moment at any length; I am only making a passing reference to it.

There are only two submissions that I would like to make with regard to that idea of confederation. The idea of confederation is not, it appears to me, necessarily inconsistent with the idea of an all-India Federation that we put forward last year; but if the authors of that idea do think that by putting it forward they can prevent certain legal and constitutional consequences from following, then, with all respect, I venture to say they are gravely mistaken. Even if you have a confederation of British India in one block and of Indian States acting in another block, and you combine the two together and call the two a federation, those legal consequences are inevitable. I venture to submit that there is a tremendous amount of confusion in discussing this thing on the question of sovereignty, divided allegiance, nationality and things

of that kind. I shall deal with them as the occasion arises; but meanwhile I will venture to submit with all respect that, if there is any seriousness about it, I do hope that the idea of confederation will not be put forward as a block in our way. I personally think that if there are people, whether they belong to British India or to the Indian States, who do not like the idea of an all-India Federation or who are opposed to it, it is far better that they should frankly and courageously say. "We are opposed to the all-India Federation and we do not want it," rather than put *forward that idea as a block in our way. That is the only caveat* that I should enter at this particular moment.

Now, My Lord, with your permission, I shall take up the various items under Head No. 2. I regret that we departed from the order which was originally accepted by Your Lordship in the paper that you were pleased to circulate, and I feel it somewhat difficult to deal with Head No. 2 without dealing with Head No. 1; but I shall observe Your Lordship's ruling, and as far as possible will avoid going into matters which come under Head No. 1.

It is, however, impossible for me to deal effectively with the content of Head No. 2 without, in a general way, giving some sort of idea as to the composition of the Senates in various countries. I have prepared a statement, which I shall venture to read, just to show what the strength of the Senates in various countries is. Most of my statement will be based upon standard text-books or books of reference which are easily available. I find that the Italian Senate consists of under 400 persons, and the method of recruitment is entirely by nomination. The Japanese House of Peers consists of 399 members, and the Spanish Upper House, as it existed until a few months ago, consisted of about 360. The French Senate consists of 314, the Swedish of 150 and the American of 96; and the American and Swedish Senates are wholly elected The Canadian Senate consists of 96, wholly nominated. The Danish Upper House has 76 members, the German Reichsrat has 68, the Netherlands 50, Switzerland 44, the Australian Upper House 36 and the South African 40. I will not refer to the others.

I wish also to mention one important point, namely, as to how the members of these Houses are appointed, either entirely by election, partly by nomination and partly by election, or wholly by nomination. Under the first heading, namely, the Houses which are entirely elected, come the United States, Australia, Switzerland, Denmark, the Netherlands, Sweden, Norway, the South American Republics, and Belgium, save for the presence of the Princes Royal. Under the second heading—Houses partly nominated and partly elected—you have South Africa, the Irish Free State and Spain, which was partly hereditary also. Under the third heading—Houses wholly nominated—you have Canada, Italy, New South Wales, Newfoundland and New Zealand.

There is only one other observation which I will venture to make at this stage, and it is this. Except, perhaps, in Japan and Italy,

let no one say that the conclusions embodied in this Report, howsoever defective they may be, are absolutely final. I for one think that there is considerable room for improvement; but I do say that we succeeded in concentrating public attention on this point. And the more there is an expression of opinion on the various aspects of this point, the better it will be for the Conference as a whole.

In the few remarks that I am going to make on Head No. 2, I should not be understood to commit myself irrevocably to any of them. I am also proceeding in a tentative fashion, and my object to-day will be rather to provoke attention on this point and to elicit information. I reserve to myself—as everyone else has reserved to himself—the liberty of revising my own opinion, enlarging my own views on certain questions, and narrowing my views on other questions. I am only throwing out a few suggestions in the hope that they will be discussed on their merits and not treated as to be embodied in my final opinion.

(*The Committee adjourned at 1-0 p.m. and resumed at 2-30 p.m.*)

Sir Tej Bahadur Sapru: My Lord, before I come to a discussion of the various propositions under Head 2, I will crave Your Lordship's indulgence just for a moment to make one or two further preliminary observations.

I would venture to say that the idea of an all-India Federation which we worked out, without going into the minutest details, at the last Sessions, appears to me to have come to stay; there is no alternative to it of a serious character which has been put forward by anybody in India or in this country. Mahatma Gandhi referred to a clause in the Delhi Settlement; and it would appear to everybody who studies that clause carefully that, so far as the basic idea of an all-India Federation is concerned, there is no dispute over it. What the content of that idea will be is a matter for discussion and a matter for settlement. I cannot forget, however, that in certain high quarters an attempt has been made to discount this idea of an all-India Federation and to put forward the idea of a confederation of Indian States first. I do not propose to go into that question at this particular moment at any length; I am only making a passing reference to it.

There are only two submissions that I would like to make with regard to that idea of confederation. The idea of confederation is not, it appears to me, necessarily inconsistent with the idea of an all-India Federation that we put forward last year; but if the authors of that idea do think that by putting it forward they can prevent certain legal and constitutional consequences from following, then, with all respect, I venture to say they are gravely mistaken. Even if you have a confederation of British India in one block and of Indian States acting in another block, and you combine the two together and call the two a federation, those legal consequences are inevitable. I venture to submit that there is a tremendous amount of confusion in discussing this thing on the question of sovereignty, divided allegiance, nationality and things

of that kind. I shall deal with them as the occasion arises; bu[t] meanwhile I will venture to submit with all respect that, if there is any seriousness about it, I do hope that the idea of confederation will not be put forward as a block in our way. I personally think that if there are people, whether they belong to British India or to the Indian States, who do not like the idea of an all-India Federation or who are opposed to it, it is far better that they should frankly and courageously say, "We are opposed to the all-India Federation and we do not want it," rather than put forward that idea as a block in our way. That is the only caveat that I should enter at this particular moment.

Now, My Lord, with your permission, I shall take up the various items under Head No. 2. I regret that we departed from the order which was originally accepted by Your Lordship in the paper that you were pleased to circulate, and I feel it somewhat difficult to deal with Head No. 2 without dealing with Head No. 1; but I shall observe Your Lordship's ruling, and as far as possible will avoid going into matters which come under Head No. 1.

It is, however, impossible for me to deal effectively with the content of Head No. 2 without, in a general way, giving some sort of idea as to the composition of the Senates in various countries. I have prepared a statement, which I shall venture to read, just to show what the strength of the Senates in various countries is. Most of my statement will be based upon standard text-books or books of reference which are easily available. I find that the Italian Senate consists of under 400 persons, and the method of recruitment is entirely by nomination. The Japanese House of Peers consists of 399 members, and the Spanish Upper House, as it existed until a few months ago, consisted of about 360. The French Senate consists of 314, the Swedish of 150 and the American of 96; and the American and Swedish Senates are wholly elected. The Canadian Senate consists of 96, wholly nominated. The Danish Upper House has 76 members, the German Reichsrat has 68, the Netherlands 50, Switzerland 44, the Australian Upper House 36 and the South African 40. I will not refer to the others.

I wish also to mention one important point, namely, as to ow the members of these Houses are appointed, either entirely by ection, partly by nomination and partly by election, or wholly nomination. Under the first heading, namely, the Houses which entirely elected, come the United States, Australia, Switzerland, mark, the Netherlands, Sweden, Norway, the South American ublics, and Belgium, save for the presence of the Princes Royal. er the second heading—Houses partly nominated and partly d—you have South Africa, the Irish Free State and Spain, was partly hereditary also. Under the third heading— s wholly nominated—you have Canada, Italy, New South Newfoundland and New Zealand.

e is only one other observation which I will venture to make tage, and it is this. Except, perhaps, in Japan and Italy,

.—I. E

most of the Second Chambers are about half the size of the Lower Chamber; and, indeed, in some States you find that the Second Chamber is very much smaller. I am only drawing the attention of the Committee to these facts, which can be gathered from any standard book.

Now, under the first heading here we assume—and I must proceed on that assumption—that we are going to have a bicameral Legislature, and we must also bear in mind the most solid fact that the Second Chamber will consist of representatives not only from the Provinces of British India but also from the Indian States. In judging the whole situation, we must not forget that, so far as the Indian States element is concerned, there is no parallel to it to be found in any other constitution in the world. That is the most outstanding feature of the all-India Federation which we are going to establish.

If you are going to have representatives from British India in the Upper Chamber, and also representatives of the Indian States in the Upper Chamber, then the question arises, as it is given under Head 2:—

> "What is to be the method of selection for each Chamber of the Federal Legislature of the representatives—(*a*) of individual States, (*b*) of groups of States?"

There is also the second question:—

> "If the method of selection is to be nomination, by what method is a State's representative's seat to be vacated otherwise than by death or on dissolution?"

I should have preferred, on the question of the representation of the Indian States in the Upper Chamber, Their Highnesses to take the lead and tell us what their view of the matter is. I am working under a disadvantage in that respect; but I venture to think that, so far as the representation of the Indian States in the Upper House is concerned, the method of selection will not present any real and serious difficulty. Your Lordship will remember that, at the last Session of this Conference, I ventured to suggest that the method of selection to be adopted for the Upper House should be indirect—in other words, that the Provincial Legislatures in British India, so far as British India is concerned, should be the constituencies for the election of their representatives in the Upper House. I believe I am right in saying that the vast majority of the members of this Committee and of the Conference supported the idea of indirect election through the Provincial Legislatures. That was also the recommendation contained in the Report of the Nehru Committee.

I am quite aware that there are certain Upper Chambers in other parts of the world where the House is entirely elected; but I venture to point out that, where the Upper Chamber is an elected House, there has generally been an attempt on its part to usurp powers over financial matters; and you cannot in fairness deny to the Upper House a very substantial voice in matters of a financial character

when that House also is an elected House. If, on the other hand, it is desired that the Upper House, in the peculiar circumstances of India, should have more or less a conservative character, and consist of men who by reason of their age, experience and judgment can exercise a steadying influence, then I venture to think the proper course for us is to have that House appointed by nomination or by election through the Provincial Legislatures. This, of course, refers to British India. Whether you will have only the Provincial Legislatures, or whether you will enlarge the constituencies for the Upper House by adding to them local boards such as municipal boards or district boards in British India, is a different question; and on that I can quite understand there being a difference of opinion. I offer no suggestion with regard to that; but, on the main question of indirect election, I stand by the recommendation contained in the Report of the Federal Structure sub-Committee.

Coming now to the Indian States, it is quite clear that, if we are prepared to favour indirect election so far as British India is concerned, we cannot expect the Indian States to adopt any other method. The Upper House in a federal constitution, if I am not mistaken, is supposed to represent the states or the governments of the states more than the people. If that is so, then I do not think we can seriously object at all to the Indian States choosing their representatives or the representatives of their governments in an indirect manner by nomination—that is to say, there will be no popular election. That is the suggestion I make with regard to the Upper House.

But when you come to the Lower House, difficulties of an enormous character do arise. So far as British India is concerned you will find, from the Report of the Federal Structure Committee, that the vast majority of the Indian members present on the last occasion favoured direct election; and I venture to think that, so far as British India is concerned, there is a very strong feeling that the election should be of a direct character. I would, in this connection, remind the House of the recommendations of the Government of India contained in their Despatch. They themselves point out that, to adopt an indirect method of election for the Lower House, would be looked upon in India as a reactionary step; and they say that possibly for the period of transition it might do to have something in the nature of a mixture of directly and indirectly elected representatives. I venture to suggest that, so far as the Lower House is concerned, British India should be allowed to elect its representatives in a direct manner.

But when you have done that, then you come up against a difficulty of a very serious character, and that relates to the Indian States. I am fully aware of the sentiment of Their Highnesses on this point, and I would beg of them not to misunderstand me and not to suppose that I am using any dictatorial language. There is nothing further from my intention than to indulge in language of that character. I thoroughly realise the peculiar position of the Indian States, and I do not want in the slightest degree to interfere

with their liberty of action or with their discretion in this matter. But I would respectfully remind them that the march of democracy is irresistible. They can regulate it in their own time, they can control it in their own time, but I venture to think that they cannot resist it; and it is for Their Highnesses to consider whether they will not adopt some method of sending their representatives to the Lower House which may enable their representatives to bear more or less the same character as the representatives of British India will do. It will distinctly be a disadvantage to the representatives of the Indian States in the Lower House, in dealing with their colleagues of British India, if they are always to be reminded that they are not popular representatives, but that they are the representatives of individual Princes or of Governments of Indian States. The real point which I am emphasising is that the Lower House should contain representatives from the Indian States of a popular character—that the representatives of the Indian States in the Lower House should not be officials. How they will do it is a question for them to decide. There are Indian States at the present moment in India which possess legislative bodies. There are the great States of Mysore, Travancore, Cochin, Bikaner and Baroda, which do possess legislative assemblies. There are other States which do not possess legislative assemblies, but which do possess bodies like municipalities or district boards. There is again a third class of States which do not possess either legislature or municipal bodies or local bodies. I do not think that it is the intention of any one of us here to force our decisions upon Their Highnesses; but we beg of them, in the interests of the all-India Federation, of which they are as much the authors as we—and, indeed, of which they are in a larger measure the authors than we are, because, without their consent, the idea would not have borne any fruit—we appeal to them to consider whether, in the interests of the country as a whole, and of the all-India Federation, in which lie our hopes of Indian unity, they will not adopt methods to satisfy popular opinion in British India. It is for them to decide, and it is for them to make a statement on the point. Therefore, my submission is that the States which are already equipped with legislative machinery should decide to send their representatives through their legislative bodies; for the States which can afford to send their representatives through municipalities and district boards, to send their representatives through them. As regards the rest, we can afford to bide our time; and we hope that the example of these bigger States, which contain legislative bodies and municipal bodies, will be infectious in course of time.

You will observe that, in question No. (i), we have to deal with the cases of individual States and of groups of States. I imagine that this classification of the States implies that there are certain individual States which would like, or would probably insist upon, individual representation, more or less following the practice of the Chamber of Princes, with which Their Highnesses are more familiar

than I can pretend to be. On the other hand, there are smaller States which can only find representation by grouping themselves together in certain groups, because it is quite obvious that, if you give representation to each one of these units, your Second Chamber will consist of something like 600 odd people, and your First Chamber must consist of even a larger number of men—and that is entirely out of the question. Therefore it is for Their Highnesses to say what is the minimum number that will meet their requirements and which will meet their needs. Then we can discuss the question of the proportions between British India and the Indian States. It is for Their Highnesses to say how, having got that minimum number, they are going to provide for the representation of the smaller States and how they are going to group them together. These are matters of a domestic character so far as Their Highnesses are concerned. We are not directly interested in the question as to how the representation is to be secured for the smaller States; but we do wish to say that we entirely sympathise with and support the claim of the smaller States that they should be represented not only in the Upper House but in the Lower House.

Now I pass to the second question under head No. 2. The question is, you will observe:—

> "If the method of selection is to be nomination, by what method is a State's representative's seat to be vacated otherwise than by death or on dissolution?"

I will not take many minutes over this question; but I would venture to say that, once a State's representative has been selected or elected or nominated to either of the two Houses, excepting in the case of officials of the States who may be sent up to the Upper House, their seats should not be vacated otherwise than by death or by dissolution—that is to say, I think constitutionally it would not be right or correct that A should be representing an Indian State in the Lower House to-day and B should be representing the same State to-morrow. There must be continuity, which alone can secure independence on the part of the representatives. But I am prepared to make an exception in the case of officials who may be sent by the Indian States to the Upper House. For instance, I could quite imagine a State sending a Minister to the Upper House to-day, and that Minister ceasing to hold office after six months, and that State desiring to send his successor to the Upper House. But, excepting for that, I would not allow the seat of a representative of an Indian State in either House to be terminated or to be taken back merely at the option of a nominating or selecting agency.

Chairman: I ought to have put this in: you would allow him to resign?

Sir Tej Bahadur Sapru: Yes; he is at liberty to resign.

That is all I would like to say with regard to the second question.

I come now to the third question, and the third question, as formulated by the Lord Chancellor, is this:—

> "Are the British Indian representatives in the Upper Chamber (other than those, if any, representing special

interests), to be—(*a*) directly elected by territorial constituencies, (*b*) indirectly elected by the Lower Chamber, (*c*) indirectly elected by the Provincial Legislatures?"

I have partly anticipated my answer to this question; and I will simply venture to say that, so far as I am concerned, I stand by the recommendations contained in the original Report, namely, that the representatives in the Upper Chamber should be indirectly elected by the Provincial Legislatures. I will not support clauses (*a*) and (*b*) of that question. I will not say anything more on that point.

I pass on to the fourth question:—

"Are the British Indian representatives in the Lower Chamber (other than those, if any, representing special interests), to be—(*a*) directly elected by territorial constituencies, (*b*) indirectly elected by the Provincial Legislatures, (*c*) indirectly elected by any other method?"

I am fully aware of the objection that was taken at the last Session of this Conference, by certain members of the British Delegations, to direct election of the representatives of British India in the Lower House. But, in the first place, we must not judge of the future by what has happened during the last ten or twelve years in British India; and, in the second place, I think that, on that point, Indian opinion is so very clear and so very strong that we have no justification for ignoring that opinion. It is true that the country is a very big one; it is true that there are difficulties of transport in various Provinces; and it is true that sometimes you find—perhaps very often you find—that there is not that direct touch between the representative of a constituency and the electors in the constituency. I have known, however, instances of various members of the Legislature in my Province, and in certain other Provinces, seeking to cultivate direct personal contact with their electors. This habit is bound to grow and must grow; and as our electorates become more and more educated they will insist that their representatives in the Lower House must keep more and more in touch with them. Probably our constituencies will have to be recast; probably when the franchise is enlarged we shall have constituencies of more manageable size and spread over compact areas. For instance, at the present time one of the constituencies in British India is composed of 46,000 people and another used to be—I do not know whether it is now—something like 96,000. There are enormous difficulties of transport; and constituencies of those big sizes are, and will continue to be for many, many years to come, absolutely unmanageable.

Chairman: Could you help us with regard to expense. Supposing a man is a poor man and wants to put up, is it very expensive to have these very large constituencies?

Sir Tej Bahadur Sapru: Very expensive—and you will have to prescribe certain rules for election expenses. I have known cases both in my public capacity and in my professional capacity where

certain families have been ruined over elections. I have known a case where a certain individual has spent something like Rs. 60,000 over an election. That may seem a very small figure to you here, but it is a very big figure in India.

Chairman: I can assure you that it is a very big figure to us here nowadays.

Sir Tej Bahadur Sapru: I have had to appear in these election cases, and I do think your rules require very, very careful reconsideration. While undoubtedly we want constituencies and popular election and all that sort of thing, I do not wish this democratic constitution simply to crush the people out of existence. That is the feeling I have in view.

I regret very much that, for certain reasons, good, bad, or indifferent, the Government of India have not found it possible to go on with the Franchise Committee. I should very much have liked to have had a concrete scheme of franchise sent by the Government of India because that would have enabled us to proceed on much more solid ground. At the present time, in discussing the method of election, we have more or less to proceed on certain essentials which may turn out to be true or false. Of course all these remarks I am making must be treated as being subject to a satisfactory solution of the question of franchise.

I come now to question No. (v):—

> "Is provision to be made for the representation by special constituencies of special interests, other than communal interests, and if so, for which interests—(*a*) in the Upper Chamber, (*b*) in the Lower Chamber?"

With regard to this question what I will say is this. I look forward to a time, and a not very distant time, when the sense of unification will have so much developed that it will be wholly unnecessary to make provision for any special interests. But you must deal with the reality of the situation as it is at the present time; and I venture to think that, if you were to do away with the representation of certain special interests at the present moment, there would be dissatisfaction among those interests. And I suggest that, quite apart from communal interests, we must make provision for the representation of both commerce and industry, both European and Indian; we must make provision for the representation of Europeans in India; we must make special provision for the representation of the Depressed Classes. I have a very strong feeling with regard to that; and you may take it from me that, whatever be calculated to promote and foster the interests of the Depressed Classes and to safeguard their interests—that will have my unstinted support. And I do certainly suggest that, so far at any rate as these interests are concerned, they require to be protected, and you will have to make special provision for them. What exactly will be the amount of representation which they will claim, or which will be granted to them, is a matter for discussion with them; and I reserve my opinion until my European friends on the one side and my friend,

Dr. Ambedkar, who represents the Depressed Classes, on the other hand—though I do not wish to treat the Europeans and the Depressed Classes on the same footing—have spoken. Whether they should be represented in both the Houses or whether they should be represented in the Lower Chamber is, again, a very difficult question. Personally, if they claim representation in both Houses, I will not object to it; but I can understand opinions being different on that point in certain quarters. I can quite understand some of my friends saying that, in certain constitutions, provision has been made for certain special interests only in the Lower House and not in the Upper House. But that is a matter on which I reserve my opinion until it is raised and argued out by any other member of this Committee.

I now come to the next question:

> "Are any special qualifications to be laid down for eligibility for membership of the Upper House?"

Your Lordship was pleased this morning to refer in part, I believe, to the question of qualifications; and, if I may be permitted to do so, I will venture only to remind the Committee of the provisions in other constitutions on this point. In most of the constitutions, so far as membership of the Upper House is concerned, there is an age limit prescribed.

Chairman: When you are old enough or when you are young enough? When you are old enough I suppose.

Sir Tej Bahadur Sapru: Yes, old enough. For instance in Canada, under Section 22, you must be of the age of 30 to be eligible for membership of the Upper House, and you must possess movable property of a certain value. In Australia, under Section 8, the provision is identical with regard to the House of Representatives as well as the Upper House, unless it is otherwise provided: the age is 21. In South Africa the age prescribed is 30. In the United States of America the age is 30. In France the age prescribed is 40. In Czechoslovakia the age prescribed is 45. Now, it is for us to decide what will be the proper age for membership of the Upper House in India. I personally would suggest anything between 30 and 35. And I would also suggest, following some of the models—particularly the Belgian model, which to my mind is very exhaustive on this question—that we must make room, we must provide for the representation of experience in the Upper House. For instance, as time goes on the number of men who will acquire administrative experience in the country will grow. Already you have got numbers of men who have held the highest judicial and executive appointments in the country. Well, I see no reason why the country should be deprived of that experience; I see no reason why they should not place their experience at the disposal of the country. Similarly, there may be men who have rendered signal service to the country in any department of life—in any department of learning or science—and they can make very solid contributions to the discussion of the various problems connected with the deve-

I now come to the seventh question, which deals with the question of the Oath of Allegiance. Now, My Lord, I will only remind the Committee that there are provisions to that effect to be found in certain constitutions.

I have been asked whether I would favour the representation of the Universities. Well, I have a very great affection for Universities in India, but I feel that it would be over-weighting the representation of the educated classes, because I venture to think that for many years to come you will find representatives of the educated classes going in larger and larger numbers to other constituencies, and I would not make a special constituency—though I would not necessarily oppose that.

Now I come to the question of the Oath. As an instance of a provision of that kind, I will remind the House of the provision with regard to the Oath of Allegiance that is to be found in the Irish constitution. It runs thus:

> "I"—so and so—" do solemnly swear true faith and allegiance to the Constitution of the Irish Free State as by law established, and that I will be faithful to His Majesty King George V, His heirs and successors by law, in virtue of the common citizenship of Ireland with Great Britain and her adherence to and membership of the group of Nations forming the British Commonwealth of Nations."

I am quite aware that the association of the Indian States makes the adoption of this form of Oath somewhat difficult, but I venture to think that the difficulty is by no means one which cannot be overcome. I should certainly have an Oath of Allegiance to the Constitution. And then you will have to provide something which will meet the point of view of the Indian States so far as allegiance is concerned—though, frankly speaking, I say that, by owing allegiance to His Majesty the King-Emperor, a subject of an Indian State does not, in my opinion, cease to owe allegiance to his immediate sovereign. I venture to speak with the greatest possible diffidence in the presence of the eminent legal authorities who are to be found here, but the old doctrine of undivided sovereignty is, to my mind, an exploded doctrine now. So far as the point of view of the Indian States is concerned in regard to that matter, I do not think anyone of us will object to meeting their legitimate point of view, so long as the Oath of Allegiance contains the element of an Oath of Fidelity to the Constitution itself. If their objection is, however, that their representatives should not be allowed to take an Oath of Allegiance to the King because that conflicts with their allegiance to Their Highnesses, I am ready to entertain any proposition which may be put forward by Their Highnesses. It is not for me to make a suggestion; it is for Their Highnesses to make a suggestion so as to preserve their sentiment in regard to that matter. We shall give the most respectful consideration to any suggestion they may make on that point.

I will not take up the time of the Committee any further on that matter; I will now deal with the question of—

> "What provision, if any, shall be made in each Chamber for nominated members, and for what purposes?"

I speak subject to correction, but Your Lordship will be pleased to remember that many of us made it abundantly clear, on the last occasion, that what we would seriously object to is the presence of an official bloc in either House. Under the scheme followed by Your Lordship at the last Session, there are going to be certain subjects which will be styled Crown subjects. Subject to any expression of opinion by other members on that matter, I would suggest that it is really not for me but for certain other members of this Conference to suggest what exactly is the amount of representation that they want to have by nomination and how they propose to secure nomination. When they have spoken on that point I shall be in a position to express our opinion. Perhaps on this matter the true lead will be given to us by the Secretary of State who, notwithstanding the disadvantage that he still continues to be a member of his Party, after all represents the Government of India in its organised form. I will therefore venture to ask Sir Samuel Hoare to give us some lead in this matter and to tell us exactly what is the amount of representation which, in his opinion or in the opinion of the Government of India, is considered to be necessary for the protection of these Crown subjects. That will enable us to judge whether in truth we are going to have an official bloc or something less than an official bloc; and therefore I reserve my opinion on that point until we have heard from Sir Samuel Hoare or from any other official representative of the Government of India or of the India Office an expression of opinion on the matter.

Lord Peel: If I may interpose, may I ask Sir Tej how he defines an official bloc?

Sir Tej Bahadur Sapru: An official bloc is a bloc which votes according to the mandate which is given to it by the Government of the day.

Lord Peel: Irrespective of its numbers?

Sir Tej Bahadur Sapru: Yes, in a House of 145.
moment consists of about 25 or 26 persons, and we could not agree to a bloc of that size.

Lord Peel: That is just the point I am on. It now consists, as we know, of 26 persons—I think the figure is 26.

Sir Tej Bahadur Sapru: Yes, in a House of 145.

Lord Peel: Would you regard a smaller number, say 10, as an official bloc? Does the question of numbers come in?

Sir Tej Bahadur Sapru: I would not call it an official bloc in that case. Assuming that we are to have Crown subjects, I would say that a reasonable number of men representing those Crown subjects might come in; but it would all depend on what the number

of the Crown subjects is and what the other provisions of the constitution are.

Chairman: On page 25 of the Report of the Federal Structure sub-Committee it is stated:—

> "Others think that the Governor-General should be empowered to nominate a specified number of persons, not exceeding, say, 10, to each Chamber."

Lord Peel: Your other test was whether they must vote as they are told. I understand that test would not apply if the number is as small as 10?

Sir Tej Bahadur Sapru: If the number is 10, in a House of 350, it does not matter to me from the practical point of view whether they vote as they are told or independently. It is of no consequence in that case; but it does matter if, in a House of 145, 26 men are told to vote in a certain way and have to carry out their instructions.

Chairman: Surely nobody is ever told really that he must vote in a certain way?

Mr. Iyengar: It is so in India.

Sir Tej Bahadur Sapru: I have been a member of Lord Reading's Government and have myself issued orders to that effect.

Lord Peel: Did you do it?

Sir Tej Bahadur Sapru: I did do it; and if I were at liberty to disclose things, Lord Peel, I would say that you made me do it on a very famous occasion. Lord Reading will bear me out that the whole of the Government of India was in the melting pot because of your orders.

Sir Maneckjee Dadabhoy: I should like to ask whether the remarks which Sir Tej has made apply both to the Lower House and to the Upper House.

Sir Tej Bahadur Sapru: To both. I make no distinction. That is all I have to say for the present.

Sir Muhammad Shafi: We at this corner of the table cordially welcome the presence of Mahatma Gandhi at this Conference, not only because his presence here to-day makes the Conference truly representative of all schools of political thought in India, but also in particular for two reasons. In the first place, he told us in his speech this morning that he has come to the Conference absolutely in a spirit of co-operation. I took down the very words used by Mahatma Gandhi. To my mind that declaration is a happy augury for the success of this Conference. In the next place, we welcome his presence in this Conference because we hope and believe that his presence will lead to that communal settlement, honourable to all parties concerned, which is absolutely essential not only for the success of this Conference but for the future of India.

Whatever observations I am going to make with regard to the various sub-heads on which our opinion has been asked must be

taken to be subject to one condition precedent. These opinions must be considered as subject to whatever decisions may be arrived at with regard to certain important communal questions in the Minorities sub-Committee, and, in particular, as subject to the claim of the Muslim community to have thirty-three and one-third per cent. representation in the Central Legislature of India as a whole.

With these few brief preliminary observations, I now wish to express my opinion—which I can fairly say is the opinion of all of us in this corner of the table—upon the various sub-heads noted by Your Lordship. The first is—

> " What is to be the method of selection for each Chamber of the Federal Legislature of the representatives—(*a*) of individual States, (*b*) of groups of States? "

I adhere to the opinion expressed by me and endorsed by other representatives of our group in the earlier stages of the Conference, namely, that this is a matter for the Indian States themselves. While the representatives of the Indian States in the Upper Chamber will in all probability—and, if I may say so, rightly—be the nominees of the Governments of those States, I agree with my friend Sir Tej Bahadur Sapru, in suggesting for the consideration of Their Highnesses that, in so far as the representation of the States in the Lower Chamber is concerned, they should devise some scheme of popular representation which will not only bring the character of the representation of the Indian States in the Lower Chamber more or less into line with that of British India in that House, but which will be calculated also to give satisfaction to their own subjects—that is to say, some method of indirect election, such as through the Legislative Councils of those States which even now possess their own legislatures or through the municipal or district boards in those States in which a system of local self-government actually exists. I have nothing further to say on this sub-head.

Coming now to the next sub-head:—

> " If the method of selection is to be nomination, by what method is a State's representative's seat to be vacated otherwise than by death or on dissolution? "

Diwan Bahadur Mudaliyar: Or by resignation.

Sir Muhammad Shafi: Just one moment, please. My learned friend, Sir Tej Bahadur Sapru, was inclined to hold that, except in the case of death or dissolution, there should be no other disqualification of any kind; and when it was pointed out to him by the Lord Chancellor—what about resignation—he admitted that resignation would very naturally be automatically a cause of his ceasing to be a member of the Legislature. But I would like to ask my friend to reconsider his position. What if a member of the Legislature representing any of the Indian States becomes a bankrupt? If he has gone through the Bankruptcy Court, to my mind a bankrupt ought to cease to be a member of any Legislature.

Sir Tej Bahadur Sapru: I put it under a different heading—under disqualification. I accept that.

Sir Muhammad Shafi: He ceases to be a member.

Sir Tej Bahadur Sapru: I accept that.

Sir Muhammad Shafi: Moreover, supposing a member from an Indian State is convicted of a serious offence, an offence seriously affecting his character, or an offence constituting a breach of law and order, would my learned friend still retain him in the Legislature in spite of that conviction? I venture to submit that, when a man has been convicted of a serious offence, whether he belongs to British India or whether he belongs to the Indian States, he is no longer worthy of holding the honourable and responsible position of a member of the Central Legislature, and should cease to be a member of such a body. These are the further suggestions which I have to make in this connection.

Coming now to the next sub-head:—

> "Are the British Indian representatives in the Upper Chamber, (other than those, if any, representing special interests), to be—
>
> (*a*) directly elected by territorial constituencies,
>
> (*b*) indirectly elected by the Lower Chamber,
>
> (*c*) indirectly elected by the Provincial Legislatures?"

I adhere to the opinion, which I expressed at an earlier stage, that election to the Upper Chamber should be indirect and should be through the Provincial Legislative Councils. As regards the Lower House, I am definitely of opinion that there election should be direct. My learned friend, Sir Tej Bahadur Sapru, was absolutely correct when he said that there was no difference of opinion among any schools of thought in British India with regard to the matter. I know of no political organisation in India, communal or otherwise, which has expressed any opinion to the contrary. We are entirely unanimous that the Lower House, as in all civilised countries, should be elected directly by the people. The argument which has been advanced, that the constituencies for the Central Legislature are so large as to make it advisable that election to the Central Legislature should be indirect, and not direct, does not appeal to me. The Central Legislature is going to be enlarged. So far as I can see, its size will be almost double the size of the present Legislature, and if no difficulty has been found in the existing circumstances I can foresee no difficulty whatever when the size of the constituencies in India shall have been halved, so to speak.

Chairman: Will you let me ask you there—would you endeavour, in making up your electoral body, to get an equal number of voters in each area?

Sir Muhammad Shafi: So far as I can see, even if adult suffrage were to be granted, the number of voters would not be more than half a million; but as there are no prospects of adult suffrage just at present, the number of voters actually would be much less, and

each member would, roughly speaking, represent a million of the population of India if the number of members in the Lower House were raised to 300. I see no difficulty at all in such an electoral system in actual working.

With regard to sub-head (v):—

"Is provision to be made for the representation by special constituencies of special interests, other than communal interests, and if so, for which interests . . . . ?"

Turning to paragraph 34 of the earlier Report of this Committee, the interests specified there are: the Depressed Classes, who, as the Committee is aware, represent the second largest minority in India, next to the Muslim community; Indian Christians, who also are an important minority community; Europeans, whose political importance cannot be measured by their number and who have contributed towards the progress of India from every point of view—material, intellectual, from every point of view—to an extent to which history bears witness; Anglo-Indians; Landlords; Commerce (European and Indian); and Labour. I venture to think that all these special interests ought to be represented in both Houses. That is our definite opinion in so far as my friends and myself are concerned. As regards the quantum of representation, that is a matter to be settled hereafter.

As regards point (vi):—

"Are any special qualifications to be laid down for eligibility for membership of the Upper House?"

So far as the age qualification is concerned, there is amongst the rules at present one rule which requires all members of all Legislatures, I think, Provincial as well as Central, to be at least 25 years of age. I am inclined to the view that the age limit for the Upper House should be raised to 30. As regards the rest I would lay down the same qualifications as are at present to be found in the rules relating to the election of members of the Council of State in India, which, as Your Lordship is aware, include a property qualification also. It seems to me that to concede that the landowners of India are entitled to representation in the Central Legislature as representing special interests—and very powerful interests—and at the same time not to lay down property qualifications so far as the members representing that class are concerned, is incongruous to say the least, and has no argument in support of it. I think tha ought to be included in the rules to be framed.

"What requirements, if any, are to be made in the matt of an Oath of Allegiance on assumption of a seat in eitl Chamber?"

My learned friend read out to the Committee the terms of the O of Allegiance which is taken in the Irish Free State. It cons of two parts: allegiance to the Constitution and allegiance to King. So far as allegiance to the Constitution is concerned difficulty can arise either with regard to representatives of B

Sir Muhammad Shafi: I am not prepared just at this moment to give an answer to that question.

That is all I have to say.

Sir Tej Bahadur Sapru: Would not they follow the precedents of certain constitutions and simply advise the House and go away?

H.H. The Maharaja of Bikaner: My Lord Chancellor, I have felt that, as we have the pleasure of having the Chancellor of the Chamber of Princes here, His Highness the Nawab of Bhopal should have opened these deliberations.

Chairman: May I say at once that I asked His Highness of Bhopal; and, as we say in the law, you are "devilling" the part for him.

H.H. The Maharaja of Bikaner: As, of course, the wishes of the Chancellor are tantamount to a command, I have no other alternative.

H.H. The Nawab of Bhopal: My Lord Chancellor, you will remember His Highness dealt with it last time; and I think it is only right that he should continue. You know that he speaks on my behalf as well as on his own behalf.

Chairman: I am very glad you have such an obedient follower.

H.H. The Maharaja of Bikaner: I do not propose, My lord Chancellor, to make a *speech to-day generally on the important* questions affecting the States. Doubtless an opportunity will occur later—perhaps on questions such as that of the relative representation and percentage of the States in the Federal Legislature; and similar opportunities will also occur, I have no doubt, when we take up questions such as that touched upon by my friend, Sir Tej Bahadur Sapru, with regard to questions of confederation, and so on.

But to-day, Sir, before I begin to represent what I believe will be the general view—and the provisional views, subject to the complete picture—of the Indian States Delegation (and any other Princes and Ministers having particular views of their own will of course be free to express them) may I just say a word or two? On the 7th September, it was my privilege, in the absence of the revered and esteemed Leader of our Delegation, His Highness the Maharaja Gaekwar of Baroda, and of His Highness the Chancellor, to express the very great pleasure and satisfaction which we derived from the presence of you, My Lord Chancellor, here, as Chairman of our Committee, to whom we all owe so much. I also generally desire to join in the words of welcome to the new members of our Committee, and particularly to Mahatma Gandhi, who represents the most important political party in India, which unfortunately was not represented last time; and similarly, to join in the words of welcome extended by some of my other colleagues to my old friend Pandit Madan Mohan Malaviya. I feel sure that in doing so I am voicing the general sentiments of the Indian States Delegation.

I would also just point out that, whilst I am personally speaking in general agreement with many of the details mentioned by Sir Tej Bahadur Sapru and Sir Muhammad Shafi, it has to be realised that it is not, by the very nature of things, in the power of any of us who are in the Indian States Delegation, to dictate policy to all Rulers and Governments of States in regard to certain matters which are covered by Head 2. In the circumstances, therefore, it will inevitably be a matter, largely at least, for the States concerned to decide

Before I go further to particulars, may I also say one word which may have to be amplified later—that is, that there appears to be a general confusion in the minds of many here as regards what really are the States. We hear of 560 and 600 States. When I am talking of the States to-day I should be understood as referring to the States proper and not so much referring to what are in Aitcheson's Treaties—I am quoting from authoritative works of reference— referred to as the petty States, Talukdaris, Jagirs and so on; though it is the duty and the care and the desire of our Delegation to safeguard all the reasonable interests of all concerned.

I have already taken an opportunity, since arriving in England, to voice the sentiments which I have all along entertained in regard to the smaller States; and my past record of services in the Chamber of Princes and elsewhere has shown the sympathy which I have always evinced for them, and my desire, as well as my fights in the past, to safeguard all their legitimate interests.

With these observations, Sir, coming to question (i), I think there can be little doubt. I am glad to see that Sir Tej Bahadur Sapru and Sir Muhammad Shafi, who have spoken before me, recognise the case of the States; and I am particularly indebted to Sir Tej for supporting what I had said during our last Session—that we have here to devise a special constitution for the States, as - to quote the words used to-day by Sir Tej—there is no parallel to the States in the constitutions of the world.

As to question (i), Sir—the method of selection of States' representatives for the Federal Legislature—so far as the Upper House is concerned, there will have to be nomination by States as Governments.

As regards the Lower House, it is a difficult matter for any of us on this side to lay down anything definite; but it is obvious that the States, big and small, are at present in various stages of advancement—political, social, economic, administrative, and so on; and in the circumstances, I have no doubt that it will be according to the conditions prevailing in each State. That is to say, if there are Legislative Assemblies, the actions of the Governments of the States concerned will doubtless be based on lines different from those in States where there are no Assemblies. We hope in time that the majority of the States will have such institutions. But the method of sending representatives to the Lower House will inevit-

ably have to be left to each State according to the conditions prevailing therein.

For my part, may I say that, having a Legislative Assembly, and having had it since 1913, I have not had time to go into that question in detail; and much will depend on what the final scheme evolved here is and the completed picture. I have no doubt that we shall have some method by which the Bikaner Legislative Assembly will have a voice in the selection of our representative in the Lower House. But I am giving you my personal views; I want to make that clear. His Highness of Bhopal wishes me to say that he shares exactly my sentiments in regard to his State, where he also has a Legislative Council.

As regards representation by groups of States, there are certain questions which may come up for discussion at a later stage. If there are any of the important States—by which I mean in the upper category of States, big and small—which have to be grouped, those are points, like some other points, on which we shall have to have discussion and settlement later on amongst the States with the assistance of the Viceroy. The question of how the groups will do it is a point which will have to be discussed then. If I may say so, I am particularly glad to hear what Sir Tej has to say on this *matter. I hope he has expressed the general sentiments of our* friends from British India. I am referring to his statement that the question of the distribution of seats *inter se*, and so on, is a matter for the States to consider with the British Government—or, as I prefer to say, with the Viceroy as represntative of the Crown.

As regards the method of selection, in case of nomination, our views are that, whilst the method will be based on lines analogous to those obtaining in British India, it is possible that there will be certain necessary modifications to meet local conditions; and the rules will have to be made in this connection by the individual States or groups of States federating.

Sir Tej Bahadur Sapru has already cleared up one point, namely, that in case there are officials from the States in the Upper House there will be a difference; and the case of official Ministers, and so on, who may resign will also have to be provided for.

Questions (iii) and (iv) do not concern the States; but question (v) deals with the provision to be made for the representation of special interests other than communal interests. We feel again that that is largely a matter for British India; but we feel that the numbers should be included in the quota of British Indian representation. We shall doubtless have further opportunities of discussing the question of special interests later on.

Chairman: I should like to be quite clear about that last point. I am not laying down anything at all now, but do I follow you rightly in thinking that if the representation were 50/50 or 60/40—whatever the proportion might be—in the Upper Chamber, any special representation should in your view be included in the num-

bers for British India and not be regarded as something extra, outside the whole?

H. H. The Maharaja of Bikaner: That is a question we might take up when we come to deal with the question of the representation of special interests.

Chairman: Yes, but I thought I understood you to say it had to be included in the quota of British India.

H.H. The Maharaja of Bikaner: We should like to discuss that further and take it up again, when that point comes up.

Chairman: Certainly.

H.H. The Maharaja of Bikaner: With regard to the qualifications for membership of the Upper and Lower Houses, it is important that, in our own interests, our representatives should have proper qualifications, so that the members we send will not be treated as inferior. From that point of view it will be very useful to us to know finally the details of what is to be settled or proposed in regard to the representation of British India.

Chairman: You would probably try to approximate your qualifications to theirs.

H.H. The Maharaja of Bikaner: Speaking for myself I have no doubt about it; and of course there is also the question of disqualification.

Chairman: Yes. It would be rather odd if in British India you had to be 40 years of age to be a member of the Upper House, whereas in the Indian States you need only be 22.

H.H. The Maharaja of Bikaner: In paragraph 26 of the Second Report of the Federal Structure sub-Committee the matter is referred to.

On the question of the Oath of Allegiance, I do not think it is necessary for anyone on this side to speak even a word in support of our well-known loyalty to the King-Emperor. Many of the Princes have even risked their lives on the battlefield for their King-Emperor. As, however, it is a question of the sovereignty and internal autonomy of the States, and of their being a separate entity, this question has to be examined to see that there is no change in the status of the States. What we consider of special importance to us is that no form of the Oath of Allegiance, or anything in that connection, should detract from the allegiance of a subject of an Indian State to the Sovereign of the Indian State concerned. If I did not misunderstand you, Lord, Chancellor, I think you said you were going to circulate something on this matter.

Chairman: Yes, I will circulate something on this point.

H.H. The Maharaja of Bikaner: It would be very useful to us to know what suggestions you have to help us. We might take up that question again.

Chairman: Yes, later on, certainly.

H.H. The Maharaja of Bikaner: With regard to question (viii) —the provision to be made for nominated members—we take it that that is meant to provide for Crown representatives.

Chairman: Yes.

H.H. The Maharaja of Bikaner. I have nothing special to say at present on that subject, except that we do not want questions of paramountcy and matters of personal concern to the Princes—dynastic questions and so on—to be included in that.

Chairman: No.

H.H. the Maharaja of Bikaner. I think that is all.

Sir Akbar Hydari: As you were good enough to give me an opportunity of speaking on the first day, I do not feel that anything in the way of introduction is required of me. We must all welcome, as indeed we all have done, the presence of Mr. Gandhi in our midst; and I share in the hopes, so widely and fervently held, that his presence, completing as it does the representative character of this Conference, will assist the progress of our deliberations to a speedy and useful conclusion.

I understand that at this stage I am only expected to pass in review the subjects which come under Head 2.

Chairman: Quite right.

Sir Akbar Hydari: I shall be able to add to my remarks if the subsequent discussion should demand it. My task is very much facilitated by the fact that most of the questions under Head 2 relate to British India, and with these I shall not deal unless, to use the phraseology of my respected friend, Sir Tej Bahadur Sapru, any question is raised and discussed about which I feel that the interests of this side are in any way involved. Moreover, those questions which relate to the Indian States specifically have been, as Your Lordship has pointed out, discussed at the last Conference at some length and a good many decisions concerning them have been tentatively arrived at. They have been left subject to decisions on such questions as relate to the powers of the two Houses which, however, are not dealt with under Head 2 but under Head 3.

So far as the Indian States are concerned, with regard to sub-head (i) and with regard to sub-head (vi), I think we are all on this side united; and Sir Tej Bahadur Sapru has also given us his support that that must be left to the Indian States themselves. But here I should like to make clear what is possibly not realised outside our States—that we claim to speak with as great emphasis as was used this morning by Mr. Gandhi, that we are also the spokesmen of the dumb millions of our subjects. In the matter of representation, our object, we feel, is the same as his—namely, the welfare of these millions. Our methods may be different. Because a certain way of attaining this common objective is chosen by British India, the same method should not necessarily be imposed on the States provided that our objective remains the same. In this connection I should like to refer to the appeal which Mr. Gandhi

made to this ancient land of Hindustan and to the culture which it represents. I make bold to say that Indian culture—whether it is Indian art, whether it is Indian literature, whether it is Indian music, whether it is the "unbought grace of life" to which Burke at one time referred—all these, I say, are represented much more and developed much more in the Indian States polity than, I venture to say, they are at present in British India. And, therefore, I appeal to all who seek for a greater India, for a united India, for an all-India, to see that this instrument for preserving this culture is not ruthlessly or with an unsympathetic hand destroyed.

In this connection I may remind you how, for instance, in the old Indian ideas of polity, there was a kind of representative government—not representative in any other sense, but still representative in this sense, that it tried to bring the Ruler and the ruled intimately into contact with each other—the old durbar idea; and I am not letting out any secret if I say that my Government is trying in its own way to see how the people may be really brought into intimate contact with the Government, so that they may have an opportunity of expressing their views and the Government may have an opportunity of expressing its policy to them. And it is just possible that we may be able to find a solution of this question in a way which is more in consonance with our own traditions and with our own present peculiar position. I may illustrate how many institutions get transformed when they are transferred to an Indian State's soil, when I say that Hyderabad has had a Legislative Council for many, many years—for certainly over 25 years, during which my connection with that State has remained since I severed my connection with British India; and you will all be surprised to hear how, in that Legislative Council we have officials, and yet times without number I, as the Home Secretary, have brought forward measures, and I have been defeated by the votes of officials. The reason is not far to seek. It is because there everybody feels that he represents not any particular consolidated interest which does not belong to the country, but that they all belong to that State itself, having an allegiance to the Ruler who stands for that State, its progress, and the prosperity of its people. Therefore I beg of you to leave this question of representation, whether in the Upper or in the Lower House to the patriotism and to the sense of sympathy with the people which exists in the States themselves, so that they may, in their own way, try to find out how best they can supply that need, and at the same time preserve the State as an instrument of that culture of which the Indian States are really the present relics.

I now come, Sir, to the only other question which is pertinent to the Indian States on this matter, and that is to the Oath of Allegiance. As to that, I beg to submit that such an Oath should have two elements and two only. One is our loyalty to the King-Emperor and the Crown, in connection with which we of the Indian States desire that it shall be perennial and indissoluble; and the other that the Oath should not, to use the formula of our respected

Chief here, in any way detract from the allegiance of an Indian State subject to the Sovereign of the Indian State concerned.

Sir, I have done. I have endeavoured to approach the different questions which you have brought under Head 2, as I shall always approach the questions which we shall have to discuss at this Conference, having one sole aim—the good of India. That lies in looking, not to British India alone, but to the Indian States also, and to the relations of these two with Great Britain—an indissoluble connection which we shall always value. All these interests should not be treated as antagonistic but as complementary. That has been, and will be, the basis of all my suggestions.

(The Committee adjourned at 4-20 p.m.)

PROCEEDINGS OF THE TWENTY-THIRD MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON WEDNESDAY, THE 16TH SEPTEMBER, 1931, AT 11 A.M.

HEAD 2.

Questions connected with the Election of Members of the Federal Legislature—(continued).

Sir Mirza Ismail: Lord Chancellor, In the few remarks which I propose to make under this Head I shall attempt to answer only those questions in which the States are interested, and not those which concern mainly, if not entirely, British India.

Taking first the method of selection for the Upper Chamber, I feel that the representatives of the States on this body should be chosen by the Governments of the States and groups of States; in other words, these members would be delegates of the Governments nominating them. The States would be expected to select, as far as possible, persons of similar standing to those coming from British India—persons of weight, character and experience, including those with official experience.

As regards the Lower House, the method of selection should be left entirely to the States. Conditions vary so much in different States that it does not seem either useful or practicable to lay down a hard and fast rule applicable to all States alike. Each State may be left to determine for itself the best method of selecting its representatives having regard to the conditions and circumstances existing in it. The States will no doubt realise that the best and the most approved method of sending representatives to a popular Chamber is by popular election which may be either direct or indirect. This is the goal which they should keep constantly in view, to be reached as quickly as possible. I do not think that this Committee need go further than this; the rest may well be left to time and the inexorable logic of events.

While I am pleased at the fact that certain interests which were not represented before are now represented, and certain interests which were inadequately represented find fuller representation now, I cannot help expressing my sense of disappointment, and the disappointment of my community, at the fact that we have not been able to secure the appointment of an additional Sikh Delegate to the Conference. I well realise that votes do not matter in the deliberations of such Conferences and Committees as these; but important decisions have to be taken, and the advice and assistance of colleagues would be valuable on many occasions. I hope that by the time the Minorities Committee meets it will be possible to nominate another Sikh Delegate.

The Federal scheme that was devised at the last Session of the Conference was deliberately meant to be provisional. It gave some of us an opportunity to consult those whom we have the honour to represent. Many of us have engaged in such consultations; and I venture to say, on behalf of the Sikh community, that, although the Sikhs are agreeable to the main principles outlined in the scheme, they cannot very well commit themselves to any scheme unless they are assured of their position in the new constitution. Unless the communal question, which, in the Punjab, means the Muslim-Sikh question, is settled, it is not possible for the Sikhs to commit themselves to a Federal scheme in which the Punjab would be an autonomous Province. I am not without hope, that, with the advice and guidance of Mahatma Gandhi, we will yet be able to find a solution for this most baffling problem.

With your kind indulgence, My Lord, I have made these few general observations. I will now come to the points under discussion, and I will take them in the order in which you have placed them.

So far as (i) and (ii) are concerned, I feel that these are primarily the concern of the States. As was rightly pointed out by Sir Tej Bahadur Sapru, we do not mean to dictate any terms in this matter to Their Highness. I was very gratified to hear yesterday from Their Highnesses of Bikaner and Bhopal that they were prepared to let their Assemblies select members for the Lower House.

H.H. The Maharaja of Bikaner: To have a voice in the selection.

Sardar Ujjal Singh: I hope the Assemblies will have an effective voice in the selection of representatives for the Lower House of the Federal Parliament. I believe that other Princes will follow this patriotic example set by Their Highnesses of Bikaner and Bhopal, not only in the interests of India as a whole, but in their own interests.

In the Upper House, of course, Governments of federating units have to be represented, and in this matter there is no dispute that the States' Governments ought to send their representatives. The representation of the smaller States is of equal importance, however, and some method will have to be devised for their grouping, as

it will not be possible to give individual representation to a large number of States. This matter also is mainly the concern of Their Highnesses; but some sort of electoral machinery will have to be devised so that no small State will be left unrepresented.

With regard to (ii), this question of vacancies arises, not only in the case of the representatives of the States, but also in the case of the representatives of British India. As was pointed out by the Lord Chancellor yesterday, in addition to vacancies caused by death or resignation there is generally a provision for vacancies which may arise on account of incurring any disqualification, and this applies both to the British Indian representatives and to the States' representatives.

I now come to sub-head (iii). With regard to the representation in the Upper House of British India, at the last Session of the Federal Structure sub-Committee we arrived at the decision that indirect election from Provincial Legislatures by the single transferable vote was the best method; and I see no reason for revising my opinion on that point except that, in some cases, reservation of a fixed number of seats will have to be provided for important minorities which may not find adequate representation by the above method. In most of the other federations, in the Upper House, the governments of the component parts of the federation are generally represented; and that is the best way of giving representation to the component parts. Moreover, by providing this constituency of Provincial Legislatures, we give a wider electorate for the Upper House than if we were to adopt the method of indirect election from the Lower House.

I come now to the very important point of direct or indirect election for the Lower House. I have studied very carefully the point of view that Lord Peel and Sir Samuel Hoare put forward at the last Session of the sub-Committee. The two arguments that were advanced were, first, the size of India and, secondly, its population—which, it is said, make it impossible to give its representatives a representative character and keep them in touch with their electors. In this connection I should first like to deal with population and the number of voters. At present, so far as the Legislative Assembly is concerned, for 105 elected members we have one and one-eighth million electors. That is to say, there are about 11,000 voters for each member with the existing franchise. Even if the franchise is enlarged three or four times we shall not have more than four million voters; and, on the assumption that we are going to have 200 members from British India, we shall not have more than 20,000 voters for one member, which is not a very high number. If you compare this with the constitution of any other country, you will find that this number of 20,000 is far too small. With regard to the size of constituencies, you will find that at present we have certainly got big constituencies, but with doubling the number of members from 100 to 200 the size of the constituencies will be reduced; it will be exactly halved. But even with the existing size of the constituencies, it will be interesting to

note the interest taken by the voters in the elections of the Assembly. In the last election but one, the number of voters who took part in the elections was 48 per cent., in spite of the fact that Burma, being *far away from Delhi and probably feeling not so much interested*, polled only 13 per cent. of the voters. Excluding Burma, the British Indian voters who recorded votes were about 60 per cent., which is not a bad figure. But if the size of the constituency is halved, certainly a larger number of voters will come forward to *the polling booths.*

Of course, Sir, precedents are not always to be followed, but they are sometimes a fair guide to any action that one may consider taking; and, in this connection, I would like to refer to other constitutions and to federations which are as big as that which we are going to form in India The size of Canada is 3,729,000 square miles as compared with British India's 811,000 square miles. (I am excluding Burma—not that I am anxious to exclude Burma, but because the figures have been supplied excluding Burma.) The area of Australia is 2,974,000 square miles, and of the United States of America 3,743,000 square miles. Now, *in all these* countries having a federal constitution, direct election is the method of election to the Lower House; and in fact I do not know that there is any country in which the Lower House is elected by any other method than the direct one. The Government of India, in their *Despatch, attached great importance to the views of the Indian* public on this point. They stated:—

> "We feel that the method of election is essentially a matter on which the considered judgment of Indian opinion should have great weight";

and Indian opinion has been expressed in no doubtful terms The people think that they lose touch with an institution with which they do not come into direct contact. I would therefore advocate strongly the method of direct election for the Lower House.

With regard to point (v)—the representation of special interests —in the last sitting of this Committee we decided that certain interests—for example, the Depressed Classes, Indian Christians, Europeans, Anglo-Indians, Landlords, Commerce (European and Indian) and Labour—ought to be represented if they cannot find representation otherwise. Yesterday it was asked whether the Universities should be represented. At present the Universities, I believe, are not represented in the Indian Assembly or in the Council of State; but Universities are represented in the local Legislatures, and I would certainly advocate the representation of the Universities in the Provincial Legislatures, but not in the Federal Parliament.

Sir Muhammad Shafi: You need not trouble about that. That is a matter for the Provincial Constitution Committee.

Sardar Ujjal Singh: That is true. With regard to the qualifications for the Upper House, *again we decided last time* that there should be the same qualification for the members of the

Upper House as now prevail for the Council of State, which is a property qualification or a certain income. The age limit at present is uniform for the membership of all Legislatures. It is 25. I am prepared to revise my opinion on that. Instead of 25 it may be raised to 30 in the case of the members of the Upper House; but the property qualification should certainly be retained, and, besides, certain persons who have rendered useful public service or possess special attainments, though not possessing property, may also be eligible for the Upper House. Such a provision exists in the Irish Constitution.

With regard to point (vii) -the provision for an Oath of Allegiance—I do not think that there should be any great difficulty about drafting some such Oath of Allegiance, on the model of the Irish one, as would be satisfactory both to the members of the States and to British India.

On point (viii), I do realise that, for the transitional period, there may be certain subjects which may be called Crown subjects; and if there are Crown subjects there should be some sort of representation on behalf of the Crown. But honourable members will see that the official members are not likely to influence the decisions of future Assemblies as they have been doing in the past, and there will be no useful purpose served in having a large number of official members. The number ought to be restricted to the extent to which it is absolutely necessary for explanation or satisfying the members of a Federal Assembly on special points pertaining to the Crown subjects. Besides nomination of such members, there will be invited, from time to time, experts who shall not vote, for the explanation and elucidation of the points concerning the Crown subjects.

That is all, Sir, that I have to say.

Mr. Zafrullah Khan: Lord Chancellor, before I proceed to make my submissions on the various subheads of Head 2 which are at present under discussion, I may say that anything I say will be subject to the reservation which Sir Muhammad Shafi put forward yesterday.

Chairman: In future I think we may regard that as a common form at the beginning of each speech.

Mr. Zafrullah Khan: But I may be permitted, for the better understanding of what I have to say, to say one word with regard to that reservation. It is this: that the reservation put forward by him. with regard to the Muslim claim, applies to the total strength of each Chamber of the Federal Legislature, including special and State representatives. Therefore it will be easier to follow the submissions that I have to make if it is kept in mind that my submissions stand only in case that claim is given effect to. I do not mean that otherwise I should have nothing to say; it only means that otherwise my submissions might in some respect have to be modified.

I will now make my submissions on the various heads; but, with your permission, Lord Chancellor, I might preface what I have to say by expressing my general agreement with regard to what has fallen from my colleagues under sub-heads (iii) and (iv) before I make my submission on sub-heads (i) and (ii). I agree that the British India representatives in the Upper Chamber, other than those representing special interests, should be indirectly elected by the Provincial Legislatures; and I also agree that British India representatives in the Lower Chamber should be directly elected by territorial constituencies. Having said that, I need not, in support of this agreement, adduce any further arguments than those that have already been submitted.

Now, with regard to the first and second sub-heads, having said that the British India representatives to the Upper Chamber should be elected indirectly by the Provincial Legislatures, it necessarily follows that, with regard to the State representatives, one must accept the position that the various State administrations would select or nominate their representatives to the Upper Chamber. With regard to the Lower Chamber, however, I beg your indulgence, Lord Chancellor, and that of Their Highnesses, to go a little further than what has been submitted by some of my colleagues on this side. To begin with, one must realise that a certain amount of uniformity would have to be insisted upon in connection with *the election and qualifications of these representatives.* Take, for instance, the matter of the disqualifications. I am not at present going into what those disqualifications should be; but it is obvious that some kind of disqualifications will have to be imposed with regard to the election or selection of representatives to the Federal Legislature. And I cannot conceive that the disqualifications with regard to British representatives and States' representatives could be any different. For instance, it would be a disqualification with regard to a British India representative if the person seeking to be elected to either Chamber of the Federal Legislature were not either a British subject or a Ruler or a subject of an Indian State. Now, it would be rather an anomaly if it were open to the States either to select or elect as a representative a person who did not fulfil that qualification. Again, in the case of serious crimes or in the case of undischarged bankrupts, it would be a serious anomaly *if A, who was subject to one of those disqualifications in British* India, could either be elected or selected by one of the States as its representative in either Chamber. Without, therefore, enlarging this part of my argument any further, I would submit that the question goes a little deeper than has been assumed in the discussions *so far. Uniformity to a certain extent,* as I have said, would not only be desirable but would be necessary.

Now, no doubt, Their Highnesses have insisted, and certain of my friends of the British Indian Delegation have agreed, that the question of selecting their representatives for both Chambers is a matter to be left entirely to the States themselves. I beg to differ from this view. We are sitting here round this table without any

allot a quota of members for the Lower Chamber to the different States and groups of States which come into the Federation.

With regard to the qualifications of these members, I have already said that there must be uniformity with regard to disqualifications, because, if it is undesirable to have someone in the Legislature when he comes from British India, it is just as undesirable to have him if he comes from the States. With regard to qualifications, however, one need not insist that, if the principle of election is introduced, the franchise qualifications should be the same throughout. The franchise qualifications in the States need not be the same as those in British India.

Sir Tej Bahadur Sapru: Why do you make a distinction?

Mr. Zafrullah Khan: As a matter of fact, with regard to the election of members of the Assembly and Council of State at present, I do not think that there is throughout uniformity in the different Provinces. The reply to Sir Tej Bahadur Sapru's question, however, is that one does realise that this business of elections would be introduced into the States for the first time; and, it being introduced for the first time, one would expect a little time would be required for the States to adjust their franchise qualifications to the qualifications existing in British India, where the principle of election in one form or another has been current for some decades. I need not remind Sir Tej Bahadur Sapru that although certain things are very desirable in certain directions, limitations and exceptions have, at least for a time, to be made with regard to some matters. If his objection were that, the moment you start the constitution, you must start it on the basis of the same franchise qualifications in the States as exist in British India, I would even be agreeable to having some time limit laid down within which *States' representatives should come in by election.* What I have submitted, however, is the view which I am putting forward and it is a view which would remove a good many of the anomalies.

Sir Maneckjee Dadabhoy: But it is a view with which the Princes themselves do not agree.

Mr. Zafrullah Khan: It is a view to which the Princes yesterday had no objection, though I understood they were not willing, or perhaps did not consider it desirable, that it should be put into practice immediately. It is a view with regard to the principles of which, whatever may be the method of enforcing it, they have no objection.

H.H. The Maharaja of Bikaner: Some of us individually have no objection.

Mr. Zafrullah Khan: Yes.

With regard to the second sub-head, my submission is this. I have only two remarks to offer. In addition to the vacation of a seat by death, dissolution or resignation, there is of course the question of disqualification. The moment any representative of the States, as much as any representative from British India, [illegible]

one of those disqualifications which would have originally shut him out from being nominated or selected or elected to one or other of the Chambers, it should necessitate his resignation or removal.

With regard to those representatives who might be sent from the States by virtue of their office, I am in agreement with what was said yesterday; namely, that when they cease to occupy that office they would of course cease to be members of the Federal Legislature as representing the particular State or group of States by which they were sent. I should like to make the suggestion, however, that where the States send representatives to the Upper Chamber by virtue of their office, it might be made clear on the occasion of the nomination that the nomination is by virtue of the office, so that, if the office is vacated subsequently, everyone will understand that the seat is vacated also. For instance, if the Prime Minister of a State is nominated *qua* Prime Minister, it should be made clear that he is being sent because he is Prime Minister; and if he ceases to occupy that position he will vacate his seat.

The next observation I have to make relates to the provision for the representation of special interests, which is dealt with in sub-head (v). Here my very brief submission is that, in my opinion, the interests specifically mentioned in paragraph 34 of the Report of the Federal Structure sub-Committee should have representation in both Chambers—that is to say, the Depressed Classes, Indian Christians, Europeans, Anglo-Indians, Landlords, Commerce (European and Indian) and Labour. There is no point in having representation for the Universities in the Federal Legislature.

Chairman: Will you tell us in what way they would be appointed, if that is convenient to you? In paragraph 34 of the Report we have a reference to the Depressed Classes, Indian Christians, Europeans, Anglo-Indians, Landlords, Commerce (European and Indian) and Labour. The point I am on is how you think their representatives should be appointed.

Mr. Zafrullah Khan: By devising special constituencies for them in each case, with franchise qualifications which need not necessarily be in accord with the qualifications for the general constituencies. For instance, take the Depressed Classes. With regard to the Depressed Classes, once it is settled what is the quantum of representation that is to be allotted to the Depressed Classes, the distribution of that quantum of representation into constituencies may not be on the same scale as it would be in the case of the general constituencies, and in their case the franchise qualifications may be different from those that are devised for the other constituencies. The same might apply in the case of the Indian Christians, Europeans, Anglo-Indians, and so on. With regard to the Landlords, once the quantum of representation for Landlords has been decided upon, special franchise qualifications for the Landlords' constituency or constituencies would have to be devised, but the representation would be by means of election.

I come now to the question raised in (vi), namely—

> "Are any special qualifications to be laid down for eligibility for membership of the Upper House?"

I agree generally with what has been stated by Sir Muhammad Shafi yesterday with regard to age limit, experience and property qualifications and also that generally the qualifications for the Upper Chamber may be the same as those that operate at present for the Council of State.

But here, in order to avoid having to make a second submission on the same heading, I should like to say a word with regard to the question of disqualifications. Generally speaking, the disqualifications laid down under the present rules may be adopted, but the observations that I wish to make are in connection with the question as to whether conviction for a political offence should or should not involve a disqualification from membership of the Upper Chamber of the Legislature—and for the purposes of my submission it would apply equally to membership of the Lower Chamber. The difficulty here is this. It would be extremely difficult to make a separate category of political offences and to decide what is and what is not a political offence.

Chairman: Would the words "moral turpitude" be of any use to you?

Mr. Zafrullah Khan: That would certainly be useful. A conviction for an offence involving serious moral turpitude might disqualify and the others might not. I need not go on to give instances; but often and often with regard to dacoity in India, for instance, it would be difficult to determine whether a particular dacoity was a political dacoity or was an ordinary dacoity where the persons taking part in the offence wanted to enrich themselves illegally at the expense of others, and so on. It is the difficulty of *defining what would or what would not be, in certain circumstances*, a political offence, that would make it difficult to lay down any special rules with regard to that. Of course, another consideration that might be helpful in this connection is the amount of punishment provided for certain offences; and if a conviction for an offence, for which the punishment provided is not very serious, were not to operate as a disqualification, the large majority of political offences would in that way be excluded.

I need make no remark with regard to the question raised in sub-head (vii); and I might conclude with just one suggestion with regard to the matter raised under sub-head (viii)—nominated members. With regard generally to the right of the Governor-General to nominate members to either Chamber, I would have no objection to the suggestion contained in the last three lines of paragraph 34 at page 25 of the Report:—

> "that the Governor-General should be empowered to nominate a specified number of persons, not exceeding, say, 10, to each Chamber."

With regard to the suggestion that when any particular question requiring technical or expert knowledge or advice is under discussion, the Governor-General should have power to nominate experts on the question which is being discussed, my submission is that the Governor-General should have power to nominate, say, not more than three such members, who may be in addition to the ten specified in the last three lines of paragraph 34, for the purpose of assisting and advising the Chamber when any such question is under discussion.

With regard to the question put by Your Lordship yesterday as to whether such members should or should not have the right to vote; having regard to the submission I have made that their number shall not exceed three in either Chamber, it really is a small matter; but my personal submission in this connection would be that such members, when they are nominated to a Chamber and are in the Chamber, should be for that purpose full members—that is to say, they should have the right of speaking in the same manner as ordinary members of the Chamber have, and on that particular question they should also have the right to vote—not that that vote is ordinarily likely to make any difference in the decision of the House one way or the other, but I would wish these nominated expert members to feel that they were just as full members as anyone else while that question was under discussion, and that they were not in the position merely of, as it were, outside advisers with regard to that question. That is all I have to submit.

H.H. The Maharaja of Bikaner: May I ask one question? I think Mr. Zafrullah Khan said that the representatives of the States should be either British Indian or State subjects. Did I understand correctly?

Mr. Zafrullah Khan: No, Your Highness. What I said was this, that at present the ordinary rule is that a person who offers himself for election should be either a British subject or a Ruler or a subject of an Indian State: and I submitted that, if there was a similar qualification insisted upon in British India in future, it would be rather anomalous that whereas an alien, for instance, could not be elected from British India, he might be elected from the Indian States.

H.H. The Maharaja of Bikaner: But that would be excluding British or Indian States' subjects, not merely British Indian?

Mr. Zafrullah Khan: Oh, yes.

H.H. The Maharaja of Bikaner: Thank you very much.

Mr. Zafrullah Khan: And I said that would be an anomaly.

Mr. Iyengar: Lord Chancellor, I hope you will give me the indulgence, which I claimed on the last occasion when I spoke, as a new member who is not conversant with all the discussions that took place when the subjects which have been grouped under Head 2 were discussed, and in some form or other provisional conclusions were entered in your Report. I therefore beg that, if I am a little

longer than I should desire in the ordinary course, the Committee will bear with me.

It seems to me, My Lord, that, so far as the composition and method of election of the Chambers of the Federal Legislature are concerned, the main principle to be borne in mind is that we are now in the process of drafting what I have already insisted upon as a federal constitution. We have also agreed that the Federal Legislature should have two Chambers. In considering, therefore, how we may constitute a Lower Chamber and an Upper Chamber there are different principles which might be put into operation; and we have got to be perfectly clear, when constituting the Upper and the Lower Chamber, what principles we shall adopt in regard to them.

As I conceive it, My Lord, a Lower and an Upper Chamber may be established on the footing that one Chamber will represent conservative, stabilising elements, and the other Chamber democratic and progressive elements. We may also conceive of the Lower and the Upper Chamber as on the one hand a legislative and financial Chamber—namely, a Chamber which possesses the primary legislative and financial powers—and an Upper Chamber which possesses revisory or suspensory powers, and in some cases even some kind of administrative powers. Lastly, as I say, in a federal constitution particularly, the principles that are usually adopted in constituting the two Chambers are that while the Lower Chamber represents what may be called the National principle, the Upper Chamber will be constituted on what may be called the *Staat* principle. In the discussions that have proceeded so far I find that there has been, very naturally and very properly, a combination and mixture, if not a confusion, of all these three principles, when we considered certain proposals as to how they should be constituted—how the selection should be made. I am only anxious, My Lord, that in so far as the Federal aspect of it is concerned, we should primarily make it a point that the principle of representing the states should be strictly confined to the Upper House of Legislature, whereas the principle of representing the nation as a whole—and all the Indian Princes as well as British India are united that we shall be a nation and that we shall have a national constitution before us—should be strictly enforced in the Lower Chamber.

Proceeding on that footing, My Lord, my appeal to the Indian States and Their Highnesses is that, having accepted federation and all that it implies, they should, along with us, sit together and co-operate to accept federation's implications. As has been repeatedly pointed out, we on this side would be quite willing to give them time to carry out all that this implies; but it should be perfectly clear that, in the fully evolved Federal Constitution, the Lower Chamber should be a Chamber which represents the principle of Indian nationality, in which the citizens of Indian States and the citizens of British India should have equal rights as

tural affinities, territorial interests, common economic interests are, it will be found, much stronger in the case of many States *vis-à-vis* their British Indian neighbours than the interests which could group Indian States together from distances far apart. From that standpoint, the position that the subjects of Indian States should possess the franchise seems to me likely to ease the difficulty of trying to group them. I may just illustrate this by one or two actual instances. Speaking from the experience of my own Province, there is a very small State called Pudukkottai. It is a State situated in the midst of a number of British Districts with which the subjects of that State have very large affinities, very large economic interests. My Lord, I personally believe that the interests of that State would be better served if leading Indian publicists from the neighbouring districts are able to represent their interests in the Lower House. Contrariwise, I would submit that there are many eminent subjects of the Pudukkottai State, learned, important and influential, who should be in a position to represent the neighbouring British Districts in the Lower House of the Federal Legislature. I want to know why either of them should be prevented from representing the interests of the other in the Federal Legislature when there is so much in common, and only this difference of allegiance to the Indian State Ruler which divides them.

Sir Maneckjee Dadabhoy: Is there any precedent for this in any constitution?

Mr. Iyengar: Yes; in the American Constitution the House of Representatives is elected on a popular basis.

Sir Maneckjee Dadabhoy: Neighbouring States and neighbouring interests?

Mr. Iyengar: What I am maintaining is the principle that there is nothing to divide. For instance, there is no disqualification on a member of the House of Representatives in the United States of America being elected from among the citizens of another State; there is no residential disqualification.

Sir Maneckjee Dadabhoy: That is a negative proposition. I only wanted to know if you could give me any precedent for what you are suggesting.

Mr. Iyengar: I will find it and give it to you for your benefit; I am quite sure there are precedents.

Dr. Ambedkar: A subject of an Indian State can represent a British district at present.

Mr. Iyengar: I am glad you have reminded me of that, Dr. Ambedkar. There is nothing, for instance, to prevent any subject of an Indian State from representing the neighbouring British Districts in the Legislative Assembly or the Council of State. There are to-day very distinguished representatives who have been chosen to represent British India who are subjects of Indian States. I am therefore putting that proposition only for the consideration of Their Highnesses, because I know that the question of the group-

ing of States and the distribution of seats among them will present peculiar difficulties. My friend Sir Mirza to-day made the suggestion that the question of the distribution of seats, both in the Lower and in the Upper Houses, could well be left to an independent and impartial Commission. If that suggestion commends itself to this Committee, I think that Commission should be enabled to examine all the methods of election that could properly be brought into play in respect of representation both in the Lower House and in the Upper House—the various methods of election and also a combination of them whenever it may be necessary.

Then, Sir, I desire to make a few remarks with regard to the other points which have been raised in the course of the discussion. Much was made of the fact that the size of the electorates makes it difficult for us to provide workable constituencies; and in that connection the question of the actual suffrage that now prevails was examined. My friend, Sardar Ujjal Singh, very properly referred to the figures of the election returns in India, and pointed out how huge numbers of electors actually attended the polls and that, as a matter of fact, there has been so far no difficulty in managing these big electorates in India. Speaking from personal experience, I may say that even a constituency of one lakh of voters is not a difficult thing to manage in a country where you have an official organisation which can be set to conduct the elections in a manner which is perhaps not so usual or so easy in a country like England. We have an official hierarchy which is able to undertake the work more easily. In Madras, for instance, where there are multiple constituencies, there have been constituencies which comprise 110,000 electors, where more than 45 per cent. of the electors have gone to the polls, and where the elections have been conducted successfully without any hitch or difficulty; and all the three candidates in these multiple constituencies have been able to go about and conduct their electioneering campaign, no doubt at great expense and trouble, but nevertheless, I submit, successfully. There can therefore be no real difficulty with regard to the size of the electorates.

The example of Ceylon—where adult suffrage was recommended by the Ceylon Reforms Commission, and has now been in operation very successfully, as we find from the publication of the results in the papers—seems to me also to show that this bogey of huge electorates and unmanageable elections is not real; and any arguments based on the ground that the electorates are too large and that the elections would be unmanageable can have no weight with those who have had the actual conduct of elections and the conduct of campaigns in connection with the elections.

One peculiar thing which took place in Ceylon in connection with this adult franchise was that Europeans who were candidates at these elections were elected by electorates which were predominantly Indian, while the European electorate was very small in number. In spite of that, these Europeans came very high in

the list of successful candidates. I mention that to show that, where the interests of the European community are properly put before the electorate, there will be no difficulty in my friends of the European community in India obtaining the support of the Indian electors when they stand for election before Indian constituencies. In the earlier days, when there was no such direct election as we have now, but only indirect elections, Europeans who chose to stand for Indian constituencies, like my late friend Mr. Norton, had no difficulty in getting themselves elected.

The question of the extent to which special electorates should be constituted for the protection of special interests, seems to me, therefore, wholly a question connected with transitional reservations. If our friends of the European community believe that India is to have a genuine federal constitution based upon Dominion Status, and if members of the European community treat India as their home and conform to all the laws of citizenship and civic status and the like to which Indians conform, and if they do not treat India merely as a land for birds of passage, but as a land where they can settle down and live with us as fellow citizens, there is, I submit, absolutely no difficulty in their getting the suffrages of Indians.

I do not desire thereby to say, however, that here and now it may not be necessary for them to secure adequate protection by means of whatever safeguards may be agreed on. That is a question which is connected with the question of transitional safeguards. But, from the point of view of principle, I cannot understand how the representation of special interests as such can have any place in a constitution which is federal, except on the basis that the Upper House represents the state principle and the Lower House the national principle.

The question of qualifications and disqualifications has been referred to, and on that I have only to say that the ordinary principles which are embodied in all constitutions as to qualifications and disqualifications will no doubt operate in our country. I do not find in any of the advanced constitutions of Europe or America that there is any attempt to impose political disqualifications upon candidates. So far as these political disqualifications or any attempt to define them is concerned, I submit that that would be not only unwise but wholly wrong in the present state of affairs. I do feel, My Lord, that, the electorates having been given the right to choose their representatives, it is not right on our part to impose restrictions except such as are necessary to give them notice—such, for instance, as bankruptcy and various other matters of that sort. I do not think it is right that we should seek to impose a disability on those who ask for the suffrages of the people. So long as the electorate with open eyes is prepared to choose a man who may be politically suspect in the eyes of certain people, I think we ought not to impose any disability of that kind, and I do not think it would be tolerated in any modern constitution.

On the question of those who may be nominated or who may be appointed to the Upper Chamber by the Indian States, or who may otherwise be nominated for other purposes, it seems to me that it is not necessary to provide either that the members should be named in virtue of their office or that there should be any clause provided in the constitution with a view to securing the vacation of their seats. I think, My Lord, that when Indian State Governments choose their representatives they will certainly be able to take every care that those whom they send to represent them are made to tender the resignation of their seats the moment the purpose for which they are sent is fulfilled or the moment they cease to represent the mandate with which they are sent. That is the position which democratic electorates are able quite easily to enforce in countries like Great Britain and others; and I think the electorate—or the Prince who sends a man—will certainly find official machinery to compel his resignation if he ceases to represent them. I may also point out, My Lord, that Governments particularly have very effective means of seeing that those who are sent to fulfil particular duties tender their resignations the moment they have performed those duties. Even in regard to the appointment to membership of the Executive Council, to membership of the India Council and to Judgeships, people have sometimes been made to understand that, when called on, they must tender their resignation. There have been many instances in which that kind of condition has been made prior to the appointment; and if that condition is made, it will be honourably fulfilled.

Chairman: Did you include judeships in that observation?

Mr. Iyengar: Yes. In India judges are appointed with the condition that they shall tender their resignation at the end of a certain period.

Sir Provash Chunder Mitter: Judges have to resign at 60, but it is news to many of us here that any other condition in regard to resignation has ever been imposed.

Sir Tej Bahadur Sapru: As a matter of fact there was no such rule up to the year 1921. In the year 1921, the Government of India—for certain reasons into which it is not necessary to go—laid down that, when a judge is appointed to any High Court, he should be made to understand that at the age of 60 he should retire; but I have known instances in which judges have been allowed to continue on the bench even after the age of 60 under the new rules.

Sir Sultan Ahmed: All I would like to say, Lord Chancellor, is this: that when a judge is appointed now, there is a promise taken from him that he will not practise in the same court when he retires or resigns. That is all. That is the only condition.

Mr. Iyengar: I am glad to be corrected by those who ought to know the facts better than I do. I was only citing these cases as instances in which it is perfectly possible for the Government

to enforce what they want; and I know, for instance, that when members are nominated they are nominated on the understanding that, whenever the Government calls upon them, they will always tender their resignation.

Mr. Zafrullah Khan: Officials?

Mr. Iyengar: Officials or non-officials, I understand.

Mr. Joshi: I have been a nominated member for ten years, and no rule has been laid upon me.

Mr. Iyengar: Your Lordship asked us whether, on the question of disqualification, words such as "moral turpitude" would be useful. I submit, My Lord, that in the view that I take of the rights of the electorate, no such restriction is possible, and the words "moral turpitude" seem to me to be as liable to difficulties of interpretation as "political offences" or "offences of a political character". I would rather, therefore, leave it to the good sense of the electorates to eschew from their representation those who are really obnoxious to the public opinion of the country. After all, it is public opinion that must settle who should be the proper representatives and who should be excluded.

Those are the only observations I have to make.

Chairman: Supposing a gentleman were making a sojourn in the Andaman Islands, would you say he ought to be elected?

Mr. Iyengar: That would come under the question of qualifications.

Mr. Joshi: My Lord Chancellor, The few remarks which I propose to make will be restricted to Head 2, including the sub-heads. I made it quite clear, My Lord Chancellor, when I spoke the other day, that what I am most interested in is the establishment of democracy in India. A mere change in the face of the rulers does not commend itself to me at all. It is from that point of view that I propose to examine the sub-heads of this table.

I feel, Sir, that if democracy is to be established in India the legislative organisation must be fully elected. The organisation must represent the people of the country and when I say the people of the country, I am anxious that all economic classes in the country should be represented in the legislative organisation according to their number. I do not wish to exclude any economic class. The landlords should be represented according to their numbers, the professions may be represented according to their numbers, the other classes should be represented according to their numbers; but I should like all economic classes represented, and their representation should be based upon their numerical strength. The proposals of the Federal Structure sub-Committee assume two Chambers. I am not in favour of a two-Chamber Legislature. I believe that the Second Chamber, if its purpose is to prevent hasty action, is not needed, because that would be provided for in some other way.

Sir Maneckjee Dadabhoy: What other way, please?

Mr. Joshi: Well, you might make a provision that legislation on subjects upon which you do not want hasty legislation should be passed twice during the course of, say, one year or two years, or should not be made effective before it is passed twice by that Chamber. It is not impossible to provide some means for delaying legislation on certain matters if we want legislation to be delayed.

Chairman: Would you have a category of subjects that had to be passed twice, or who would judge whether they ought to be passed twice?

Mr. Joshi: Well, we may make a category of subjects.

My Lord Chancellor, I am quite willing to consider this question of the Second Chamber if I find what provision we are making for effecting changes in our constitution. If I find that no unnecessary impediments are placed in the way of effecting changes in the constitution as a temporary measure, it may be made possible for us to accept even a Second Chamber; but that will depend upon the provision made for changes in the constitution. If the change in the constitution is made wholly dependent upon the vote of the Second Chamber, that change, in my judgment, can never be made. I therefore feel that my final views on that question will depend upon the provision that is made for the changes in the constitution.

As regards the method of election, I hold, Lord Chancellor, that the direct method is always preferable; and I hold that the direct method should be used for both the Chambers. As a matter of fact, even to-day the Council of State is elected on a direct method—not that I approve of the constitution of the Council of State. If all the economic classes are adequately represented in accordance with their numerical strength in the two Chambers, I feel that the direct method is a preferable method. But what concerns me more, Lord Chancellor, is not the method, whether it is direct or indirect. What concerns me more is that all the economic classes in the country should be adequately represented in accordance with their numerical strength. If it is found, after we have considered the question of the franchise, that that adequate representation will not be possible by direct election, I shall certainly have to consider whether there is any method of indirect election, such as the method of electoral colleges, which could be adopted; but to-day I express my preference for the direct method, on the understanding that by direct method all the economic classes will be represented in the Legislature in accordance with their numerical strength.

Chairman: Do you think an electoral college would assist in the representation of the villages?

Mr. Joshi: Well, I think so. You would have to group them and have an electoral college. It is not impossible to secure the representation of all classes. Although I hold this view, Lord Chancellor, if changes in the constitution have not been made

very difficult I am prepared to consider the question of election of members for the Second Chamber by the Provincial Legislative Councils.

Chairman: Do you mind saying that again; I did not quite follow.

Mr. Joshi: If changes in the constitution are not made very difficult, I shall be quite prepared to reconsider my views as regards the method of election in the Second Chamber.

Now, Sir, this is so far as British India is concerned; and my view with regard to Indian India is the same. I hold that there should be no difference in the method of selecting members of the Legislature whether from British India or Indian India. In my judgment no case has so far been made why a difference should be made. We were told that the conditions were different and that there were different stages of development. Lord Chancellor, I do not feel that there is a great difference in the intellectual development, the social development, or the economic development, in either the Indian States or British India. I therefore feel that the method of selection of members for both Chambers from the States should be the same, and the franchise and the qualifications should also be the same. Lord Chancellor, I feel that Their Highnesses should consider this question from the point of view both of British India and themselves. We greatly appreciate their desire to join the Federation; and, as their representatives are going to sit along with the representatives of British India in the Legislature, which is common to both, without any desire to dictate or to interfere in the internal affairs of the States, in my judgment they should not take up an attitude that their representation in the common Legislature is a matter which must be left to them alone. We are considering the formation of a Legislature, not for Indian India alone, but for the common Federation. It is therefore, the interest of both British India and the Indian States to see what kind of Legislature is being established. We are, therefore, equally interested as the Princes themselves are in coming to a right decision on that point. It is not an interference in their internal affairs at all, but it is an interference, and a definite interference, in a matter which the Princes themselves have with great fairness conceded. They have agreed to join a Federation; they have agreed that the decisions on certain matters should be joint and not by the Princes alone. To that extent they have made interference legitimate; and I feel, Sir, that the method of selection of the representatives of the States in the common Legislature is not a matter which the Princes should claim to be their concern alone—it is a common concern. Let us therefore decide here that the legislative organisation should be representative of the people, and—and I say this more emphatically—may be called the Popular Chamber. The Popular Chamber must represent the people. I feel, Lord Chancellor, that the principle that that Chamber should be an elected body should be laid down by this Conference. I was very

Mr. Joshi: Well, you might make a provision that legislation on subjects upon which you do not want hasty legislation should be passed twice during the course of, say, one year or two years, or should not be made effective before it is passed twice by that Chamber. It is not impossible to provide some means for delaying legislation on certain matters if we want legislation to be delayed.

Chairman: Would you have a category of subjects that had to be passed twice, or who would judge whether they ought to be passed twice?

Mr. Joshi: Well, we may make a category of subjects.

My Lord Chancellor, I am quite willing to consider this question of the Second Chamber if I find what provision we are making for effecting changes in our constitution. If I find that no unnecessary impediments are placed in the way of effecting changes in the constitution as a temporary measure, it may be made possible for us to accept even a Second Chamber; but that will depend upon the provision made for changes in the constitution. If the change in the constitution is made wholly dependent upon the vote of the Second Chamber, that change, in my judgment, can never be made. I therefore feel that my final views on that question will depend upon the provision that is made for the changes in the constitution.

As regards the method of election, I hold, Lord Chancellor, that the direct method is always preferable; and I hold that the direct method should be used for both the Chambers. As a matter of fact, even to-day the Council of State is elected on a direct method—not that I approve of the constitution of the Council of State. If all the economic classes are adequately represented in accordance with their numerical strength in the two Chambers, I feel that the direct method is a preferable method. But what concerns me more, Lord Chancellor, is not the method, whether it is direct or indirect. What concerns me more is that all the economic classes in the country should be adequately represented in accordance with their numerical strength. If it is found, after we have considered the question of the franchise, that that adequate representation will not be possible by direct election, I shall certainly have to consider whether there is any method of indirect election, such as the method of electoral colleges, which could be adopted; but to-day I express my preference for the direct method, on the understanding that by direct method all the economic classes will be represented in the Legislature in accordance with their numerical strength.

Chairman: Do you think an electoral college would assist in the representation of the villages?

Mr. Joshi: Well, I think so. You would have to group them and have an electoral college. It is not impossible to secure the representation of all classes. Although I hold this view, Lord Chancellor, if changes in the constitution have not been made

very difficult I am prepared to consider the question of election of members for the Second Chamber by the Provincial Legislative Councils.

Chairman: Do you mind saying that again; I did not quite follow.

Mr. Joshi If changes in the constitution are not made very difficult, I shall be quite prepared to reconsider my views as regards the method of election in the Second Chamber.

Now, Sir, this is so far as British India is concerned; and my view with regard to Indian India is the same. I hold that there should be no difference in the method of selecting members of the Legislature whether from British India or Indian India. In my judgment no case has so far been made why a difference should be made. We were told that the conditions were different and that there were different stages of development. Lord Chancellor, I do not feel that there is a great difference in the intellectual development, the social development, or the economic development, in either the Indian States or British India. I therefore feel that the method of selection of members for both Chambers from the States should be the same, and the franchise and the qualifications should also be the same. Lord Chancellor, I feel that Their Highnesses should consider this question from the point of view both of British India and themselves. We greatly appreciate their desire to join the Federation; and, as their representatives are going to sit along with the representatives of British India in the Legislature, which is common to both, without any desire to dictate or to interfere in the internal affairs of the States, in my judgment they should not take up an attitude that their representation in the common Legislature is a matter which must be left to them alone. We are considering the formation of a Legislature, not for Indian India alone, but for the common Federation. It is therefore, the interest of both British India and the Indian States to see what kind of Legislature is being established. We are, therefore, equally interested as the Princes themselves are in coming to a right decision on that point. It is not an interference in their internal affairs at all, but it is an interference, and a definite interference, in a matter which the Princes themselves have with great fairness conceded. They have agreed to join a Federation; they have agreed that the decisions on certain matters should be joint and not by the Princes alone. To that extent they have made interference legitimate; and I feel, Sir, that the method of selection of the representatives of the States in the common Legislature is not a matter which the Princes should claim to be their concern alone—it is a common concern. Let us therefore decide here that the legislative organisation should be representative of the people, and—and I say this more emphatically—may be called the Popular Chamber. The Popular Chamber must represent the people. I feel, Lord Chancellor, that the principle that that Chamber should be an elected body should be laid down by this Conference. I was very

glad yesterday to hear from His Highness The Maharaja of Bikaner and from His Highness The Nawab of Bhopal that they propose to leave the selection to their Legislatures.

Sir Sultan Ahmed: No, to give the Legislature some voice in the matter.

Mr. Joshi: To give them some voice. Well, Sir, I was quite glad that they made that declaration; but at the same time that is not enough, that one or two or three Rulers should declare here that they will give them a voice. From my experience of what that voice is, I am not very sanguine. I can tell you, Lord Chancellor, a little of my experience. When His Highness The Maharaja says that he will give a voice to his Legislature . . . .

Chairman: You want a loud speaker?

Mr. Joshi: I think there should be a panel of men to be chosen either by himself or by his Assembly, out of which the selection should be made. Lord Chancellor, such panels are used in our present Legislature for electing what are called Standing Committees for different Departments, I know by experience that when a Department wants certain persons on that Committee they make the panel a very large one.

H.H. The Maharaja of Bikaner: Lord Chancellor, May I say I never mentioned the word " panel ". I hope I made it clear: we will go into that question. In what way my Legislature will be consulted, and have a voice in the matter, is a point on which we have nothing thought out at present.

Mr. Joshi: I made that guess because my conjecture is that that may be one of the methods. What happens is that the Department asks for a large panel, with the result that those people who have been selected get into the panel; and when they get into the panel, they are nominated. I have absolutely no hesitation in stating that it was sometimes considered that I should be on some of them; and, in the Legislative Assembly, I have no hesitation and no shame in stating that I have no chance of election, though a panel could easily be made up including my name and I could be on those Committees. Therefore I feel that there should be a full election for the members of the Legislature even from the States; and we shall not be satisfied merely with a voice in the election or even with an election of a different kind.

Now, Sir, I will make one remark about what are called the special qualifications for the members of the Upper Chamber. It is said that the Upper Chamber should represent experience, weight and character. Lord Chancellor, I do not know how we are going to frame any rules by which the selection of such people could be governed. It is said that the holding of property should be one of the qualifications. May I ask whether you can guarantee the possession of experience, the possession of weight, or the possession of character, by making people holding certain property eligible for election to the Upper House? I therefore feel that it will not be of any fruitful effect if we try to lay down qualifications

of this kind. If any qualifications at all are to be laid down, those qualifications must be such as will be ordinarily possessed by all economic classes. If distinguished service in public administration is going to be one of the qualifications, it is quite possible that people who are poor will be unlikely to possess that qualification; but it is quite possible to frame a qualification which they may possess. I would suggest that long membership of a trade *union or work for a trade union may be regarded in that connection* as distinguished service.

My own feeling is, however, that it is not easy to lay down a qualification which will be available for all economic classes, so that no one economic class will be predominant in the Upper Chamber. I am not therefore in favour of laying down a qualification of this kind. The only qualification, it seems to me, which could be laid down, and which would be common to all economic classes, is the qualification of age. If you want experience you can always impose a minimum age limit of 40, 45 or 50—though that may be too high. At any rate, we can always find some age limit below which a man could not be a member of the Upper Chamber. That is a qualification which is available for all, and which may show the possession of experience.

There are only one or two other small points to which I wish briefly to refer here. It has been suggested that imprisonment should be regarded as a disqualification, and it was also suggested that only imprisonment for an offence which shows moral turpitude should be made a disqualification. In my judgment it is not easy to say which offences involve moral turpitude. In the first place, it was said that political offences are offences which do not show moral turpitude. I do not know whether you would consider that picketing in a strike is a political offence. It may be a political offence or it may not. It may not be a political offence, but at the same time I do not think it shows any moral turpitude. I will go further: there may be cases where even theft may not show moral turpitude, in certain circumstances.

Mr. Sastri: For instance, a hungry man stealing an apple.

Mr. Joshi: That does not show any moral turpitude. I therefore feel it is wrong to make any distinction of this kind. Personally, I hold that, when a man has undergone imprisonment for a certain period, he has cleared himself of his offence and should be made eligible for election. You should leave it to the voters; you should have no right to put such a limitation on the voters.

The second point concerns nominated members. I have no objection to certain members being nominated to represent those Departments which may be reserved to the Crown; but at the same *time I am not in favour of giving them the right to vote. Unlike* Sir Tej Bahadur Sapru, I feel that even a bloc of ten may be able to exercise a very great influence and balancing power in a Legislature of three hundred members. I would therefore suggest that, although there may be a few nominated members, they should have no power to vote.

tion in which a senate does not exist, and I should like to be enlightened on that point by my friend Mr. Joshi. Even assuming, for the sake of argument, that there may be a constitution without a senate, in the particular case of India it would be absolutely impossible to dispense with the Upper House. We have to go by the exigencies of each country and the requirements of each country; and that matter was so fully expressed in the Report of the Federal Structure sub-Committee that I am tempted to quote a passage from it at page 21:

> "India's own practical needs and conditions must be the governing factor, and no constitution, however theoretically perfect, and however closely modelled upon precedents adopted elsewhere, is likely to survive the tests of experience unless it conforms to the needs and genius of the country which adopts it . . . ."

Here, with my knowledge, and, I may assert, with my experience *in the Upper Chamber—for I have now been for eleven years* a member of the Upper Chamber in India, and I am still a sitting member of that Chamber—I shall speak with emphasis, and say that the proceedings of the Indian Legislature afford, if any proof is needed, ample evidence of the service which the Upper Chamber has rendered to India, and of the manner in which that Upper Chamber has, during the last ten years—during the period of the Montagu-Chelmsford Reforms—saved India from certain disastrous catastrophes. I could quote chapter and verse if it were necessary; but many of my friends here are perfectly conversant with the legislative history of the Government of India for the last twelve years.

Sir, the decision at which this Federal Structure sub-Committee *has arrived is—and I see from the Report that it was a unanimous* decision—that the British Indian members of the Senate should be elected by the Provincial Legislatures by the single transferable vote. This decision, of course, is in consonance with the finding of the Simon Commission that, if no Second Chambers are created, the members of the Council of State might be elected by the members of the Provincial Councils, the same method of proportional representation being employed. My Lord, we have heard in the course of the last two days how the method of direct election is liked and loved by the people of India. We have heard from many members, in the course of the last two days, of the popularity, as a rule, of direct election. This Committee is now going to make a very extensive departure from that line; and I do not see any consistency in argument or any cogency if direct elections, which are so necessary and indispensable in the case of the representative Lower House, should be dispensed with in the case of the Upper Chamber. At any rate, this decision which has been arrived at I do not now propose to go against. The case, however, must be carefully considered; and the case which I propose to place before you I can best explain and elucidate to you by a reference to *paragraph 8 of the Reforms Office Despatch No. 3, dated 6th* May, 1920. This Despatch, My Lord, has been quoted at page

129 of the Government of India Despatch on the proposals for constitutional reform. Speaking about the Upper Chamber, the following observations were made by Lord Chelmsford's Government:—

> "The functions of such a chamber, as we conceive them, are those of a revising body, capable of exercising in relation to the popular Chamber a restraining though not an over-riding influence, and its composition is a corollary of its functions. The members of such a body must be persons possessing what has been called the senatorial character; they must, that is to say, be men who will bring to bear, no problems of State, the qualities of knowledge, experience of the world, and the sobriety of government which comes thereby."

And, My Lord Chancellor, you will pray mark the following most pregnant sentence:—

> "No form of indirect election could satisfy these requirements. At its best, this method would produce a body which merely reflected the views of popular electorates; at its worst, one which consisted of the delegates of small electoral cliques; but in no circumstances could it yield a true senate."

My Lord, these are very significant words. They hold good to-day as they held good in 1920. Even the Government of India, in their Despatch on the subject, distinctly stated and expressed their preference for maintaining the present system. The Government of India, in their Despatch, stated that, if the present system of direct electorates is to be altered for an indirect electorate, they would agree only on two important conditions—provided those two conditions have been fulfilled. I will read it:—

> "We would, however, make our acceptance of change in the existing method of election conditional upon two objects being attained. We should wish to be satisfied that the change involved no prejudice to the rights of minorities. Our second proviso would be that the change commended itself to public opinion. Subject to these two considerations, we should be prepared to accept the proposals of the Statutory Commission."

My Lord, I am not quite certain that these changes are not going to prejudice the minorities. My Lord, I am not yet quite satisfied whether these changes have been accepted generally by public opinion.

My Lord, that was the view of the Government of India. Perhaps I may take up another minute on the opinion of the Indian Central Committee on this subject. The Indian Central Committee, in paragraph 131 of their Report, gave expression to the following opinion:—

> "With the exception of an increase in its numbers, we propose to make no change in the constitution of the Council of State."

Then they say:—

> "We also recommend that the present proportion between the elected and nominated seats should be maintained. The retention of the Council of State, composed on these lines and possessing all its existing powers, might appear somewhat incongruous with the revised constitution we have proposed for the Government of India; but while on the one hand it is unlikely that the use of the special and somewhat drastic powers of the Council will be invoked by a responsible Government of India, on the other hand, the existence of these powers might prove a valuable safeguard in contingencies which cannot at present be foreseen. We are conscious of the magnitude of the changes we have recommended and the serious consequences which a breakdown of the new arrangements might entail. We therefore feel no hesitation in recommending a retention of powers equally drastic to deal with such eventualities."

This much for my friend Mr. Joshi.

(The Committee adjourned at 1-5 p.m. and resumed at 2-30 p.m.)

Sir Maneckjee Dadabhoy: I have already shown the indispensability of the Upper Chamber to give the Executive a reasonable, judicious and discriminating support when necessary. Its existence is also indispensable to prevent the breakdown of the administrative machinery of government and also to prevent deadlocks in the administration of government. In view of the decision which has been arrived at for the Upper Chamber to be constituted by an indirect form of election, I am prepared to give my provisional consent to this proposal; but I do so on the distinct understanding that the nominated element will subsist and continue to exist as at present. I insist that the numbers and proportions between the elected and non-elected members should be left unchanged, and that the Upper Chamber should retain all its present powers, if indeed it is not given any additional powers—a matter to which I shall refer later on when we are discussing Head 3, the relations between the two Chambers. But I must express my gratitude in this connection to Sir Tej Bahadur Sapru, who has had practical experience of the working of the Montagu-Chelmsford Reforms; and I am very pleased to have heard from him that, if the Upper Chamber is an elected House, it has a general tendency to usurp powers on financial matters. Sir Tej Bahadur Sapru frankly went to the extent of stating that you cannot in fairness deny to the Upper House a very substantial voice in matters of a financial character when that House also is an elected House. I do not think it makes any difference whether the House is elected by direct election or whether it is an elected House by indirect election.

Sir Tej Bahadur Sapru: I did not follow you there.

Sir Maneckjee Dadabhoy: In my opinion, whether it is a nominated House, whether the election is by direct vote or by indirect vote, it makes no difference. I shall certainly insist on higher privileges and concurrent powers for the Upper House when we are discussing Head 3; but at present I shall content myself with saying that, while I give this provisional sanction with some measure of reluctance, yet I hope we shall be able to frame a constitution on these lines which will be acceptable. But, My Lord, in studying your Federal Structure sub-Committee's Report, and in reading that small paragraph which refers to the method of election to the Upper Chamber, I see that it was unanimously decided that the Provincial Councils should have full power to elect members for the Senate. But it is not clear to my mind what was the real intention of the Federal Structure sub-Committee—whether this power which is given to Provincial Councils will be confined to the election of members only of that body, or whether that power will be exercisable in the case of outsiders. And I think it is essentially necessary that, even if we go in for large electorates, we should extend the operation of that power and that privilege to the local councils, and not confine it to the members of the Council alone, but give them a greater latitude to elect anybody from outside in their Province; and I submit that that will be in consonance with justice and good government. I therefore give my consent to indirect election on the distinct understanding that this condition will be scrupulously observed, and I have a very substantial reason for insisting on this condition. I know—and many of my countrymen who are experienced in Indian parliamentary life know—that there are many respectable people in all parts of India who do not like to humiliate themselves and go and beg for votes at an election. There are very many respectable people in India who—to use the language of the All Parties Conference, commonly known as the Nehru Report—do not like shouting and tub-thumping for their votes; and I say that it is for this reason that it is essentially necessary that we should endeavour—and it is in the interests of India that we should endeavour—to get that class of good, quiet, sedate, sober citizens in our Councils, who can take a quiet and rational view of things, and who are not carried away by the bustle and noise of everyday politics in India.

My Lord, I shall next venture to offer a few observations on the much-hated question of the official bloc. It is a question which, I know, has excited a great deal of rancorous and acrimonious discussion in many places. It has been, for the last eleven years, the one theme of talk; and when any measure, supposed to be considered as a popular measure, was brought in the Assembly and passed there, but vetoed by the Council of State, it was said that the Council of State rejected that by the influence and support of the official bloc. My Lord, I venture to speak on this subject with some measure of diffidence; yet I am firm in my conviction that, in view of the new and great experiment which

we are about to make in the form of a Federal Government, it is essentially necessary and indispensable that this official bloc should continue to exist during the transitional period, or at least for a certain number of years My Lord, my past experience of the Legislative Council makes me absolutely nervous to reflect that this power might be taken away or dispensed with. My learned friend, Sir Tej Bahadur Sapru to whose views I always attach great importance, yesterday told us, in defining what is meant by "official bloc," that the official bloc means that that bloc is to carry out the mandate of Government, and is a mechanical voting machine. He did not use those words, "mechanical voting machine," but I use those words My Lord, there may be some truth in this description and I am frank to confess it; but at the same time I do not think that that is an altogether correct description. In my own experience I have noticed on many occasions the Leader of the Assembly has informed the Assembly, before a vote has been taken on some important question, that the Government will vote, leaving the official bloc to exercise their discretion in the matter.

Mr. Jayakar : It is very rare.

Sir Muhammad Shafi : Sometimes in the Council of State.

Sir Maneckjee Dadabhoy : The Assembly also: I can give illustrations in the Assembly. It has happened; and it is not always true, therefore, that because the members of the Government, as a constitutional Cabinet, have to vote in obedience to the decision passed at the Cabinet meeting in the presence of the Viceroy—it does not necessarily follow, I say, that that official bloc must and should always be employed for carrying out the mandate of the Government. On several occasions absolute liberty was given to members in the Council of State, to which I can bear testimony; and I know from my own personal watching of events in the Assembly, of which I have been a close student for many years, that the same privilege has been extended to them on several occasions.

Mr. Iyengar : On official measures or non-official measures?

Sir Maneckjee Dadabhoy : On official measures.

Sir Tej Bahadur Sapru : Can you give any instance of that during the last eleven years? I know of one instance of a non-official character in which a member of the Government voted in that way.

Sir Maneckjee Dadabhoy : Of a non-official character there have been several.

Mr. Iyengar : If you can give me one instance of an official character I shall be obliged.

Sir Maneckjee Dadabhoy : Yes, perhaps I will give you one.

Sir Tej Bahadur Sapru : Not official.

Sir Muhammad Shafi : My Lord Chancellor, I was Leader of the Council of State during a period of three and a half years

to the best of my recollection. I cannot recall a single occasion on which, in regard to an official measure, the official members of the Council of State were allowed freedom to vote as they liked.

Sir Maneckjee Dadabhoy : There must be somebody always to support and represent the Crown subjects. We are going to have reserved subjects like the Army, foreign relations, external relations and probably other matters; and I am going to plead for a similar reservation in respect of another important subject at a later stage of our debates. These subjects require some people always to represent not only the point of view of Government but to elucidate the matter—to throw light upon it, not only from an official standpoint, but also from the standpoint of experience which the official members of both bodies generally possess. It is, therefore, essentially necessary that some official bloc should remain in existence. As to the numerical strength of that bloc there may be a difference of opinion; but, as far as the Council of State and the proposed Upper House are concerned, My Lord, I insist that the present official bloc of twenty should continue to exist for the safety of India, for the better government of India, and for the success of the new constitution. I think that is necessary.

Chairman : Would you have twenty irrespective of what the total number was?

Sir Maneckjee Dadabhoy : No, Sir; I am assuming the existing numerical strength of the Upper Chamber, which is sixty.

Chairman : You want thirty-three and a third per cent.?

Sir Maneckjee Dadabhoy : If it is increased to one hundred or one hundred and fifty it should be in that proportion.

Sir Muhammad Shafi : May I ask my learned friend to inform the Committee—if the strength of the Upper House be enlarged to one hundred and fifty, where will the Government of India get fifty officials of the requisite standing and experience?

Sir Maneckjee Dadabhoy : If you cannot get officials, you can supplement it with non-official members.

Sir Tej Bahadur Sapru : Would you then call it the official bloc?

Sir Maneckjee Dadabhoy : No, not then; you would not call it the official bloc.

Sir Tej Bahadur Sapru : May I ask your opinion on one point? Assuming there is a popular Ministry at the Centre, to whom would you give the right of nomination?

Sir Maneckjee Dadabhoy: I would give it to the Cabinet as a whole.

Sir Tej Bahadur Sapru : And do you expect the Cabinet will select any persons other than those belonging to their own point of view?

Sir Maneckjee Dadabhoy: Well, if they do not select, they will be enemies of their country.

Then, Sir, as regards the representation of special interests, I am equally keen on that subject. I heard this morning, with some amount of disappointment, the expressions of opinion of my friend, Mr. Rangaswami Iyengar. He spoke to this Conference about Europeans who had been for twenty-five or thirty years in the country but had made India only a land of passage, as he said. He said: Why should they have special representation?

Mr. Iyengar: I did not say that.

Sir Maneckjee Dadabhoy: I understood you to say that. I have got a note that you said that it would all come into the general representation.

Mr. Iyengar: Yes, I wanted that.

Sir Maneckjee Dadabhoy: But that is not a feasible proposition at present.

Mr. Iyengar: That is a different thing.

Sir Maneckjee Dadabhoy: It is not feasible at present. Then you ask for this to be done. Now, My Lord, if twenty-five or thirty years' stay in India will not give a man a right to participate in the deliberations of its Legislature, I wonder what will be necessary to confer such a right. I have been speaking of Europeans, but let me say that I shall be referring presently to other classes. I am not holding a brief in any way for Europeans in the country; but I say there are Europeans who have come to India, made their home in India for years together, for a quarter of a century—some families have a traditional connection with India and members of those families come to India and stay there for many years—if you do not allow their own special interests to be specially represented, who is going to represent them? What has been our past experience in this matter, may I enquire? Can any member of the Assembly or can anyone here who is connected with the Assembly give me an instance during the last eleven years in which any Indian member has fought the cause of Europeans in the Assembly or in the Council of State? I say no to that. How are these people to be represented? Who will put their case before the Council or the Assembly? It is only right, it is only fair, just and equitable, that this measure of representation should be given, and that a special constituency should be constituted for the purpose. If we want to be just to ourselves we ought to be just to our neighbours; and it is essentially necessary that in matters of this kind equality of privileges should be given. I go further, Sir. My friend, Sir Tej Bahadur Sapru, suggested that we should have special constituencies in regard to Commerce, Europeans and the Depressed Classes.

Sir Tej Bahadur Sapru: And Labour.

Sir Maneckjee Dadabhoy: Yes, and Labour. I understand it is suggested that there should be special constituencies selected;

but it is not always possible to get representation by special constituencies, and therefore in some cases you would have to fall back on nomination with regard to special interests. Sir, as regards the Depressed Classes, subject to what I hear from my friend Dr. Ambedkar, I must state that their case is entitled to our special consideration. Perhaps it is not known that it was I who, twenty years ago, started the ball rolling by moving in the late Supreme Council a resolution inviting Government to give larger privileges to the Depressed Classes, to admit them more freely and extensively in Government services, to confer upon them other and special privileges and to uplift them from their depressed position. I well remember that occasion. I caused an uproar in the Supreme Council; almost every Hindu opposed me, and, if my memory is correct, I had a shower of rebuke even from my friend Pandit Malaviya. The Depressed Classes are numerically very strong, but they are scattered all over India and I am unable to see what method can be devised for the formation of constituencies for them. If it is possible to form constituencies for them, I shall be glad; but at the same time I think they should be largely represented in both the Houses by nomination, wherever it is not possible to go in for proper and well represented constituencies.

Perhaps you will now permit me to say a word or two on the question of qualifications. With regard to the qualifications of a candidate, I pray that the present catalogue of qualifications may be left undisturbed. I suggest that the qualifications which exist at present were framed after careful study and mature consideration. I am a great believer in the property qualification, despite what has been said against it. I am glad that my friend, Sir Tej Bahadur Sapru, is not altogether opposed to it. He says he does not think it should be a necessary qualification; but, in my opinion, at any rate so far as the Council of State is concerned, if you want to get the right class of people in the Upper House the property qualification is absolutely essential.

Chairman: I want to follow that if I may. You are not saying that property should be *a* qualification, but that it should be a *necessary* qualification?

Sir Maneckjee Dadabhoy: Yes. At present payers of Income-tax on a certain income—I understand it is Rs. 25,000—are allowed to stand as candidates. Landlords—the big zemindars who own larger estates—are allowed to stand as candidates. I may say in passing that we know that some of those landlords have thrown great lustre on and have served with great credit on the Council of State. I consider that it is desirable to obtain the services of people who have a stake in the country. We do not want our councils to be full of briefless barristers, of unoccupied journalists, or of other classes who have no interest in the country. And, so far as India is concerned, if the new Constitution is to be made a success, my submission is that we want in our councils people who have an interest in the country and a substantial stake in it.

Chairman: Perhaps you will help me in regard to this. Suppose a man had been Prime Minister of India for many years and had done great public service, but was a poor man, would you say he would not be eligible?

Sir Maneckjee Dadabhoy: He would certainly be eligible; that is a rule which we have even to-day. Not only that, but presidents of local boards and other bodies are allowed to stand as candidates; it is considered a qualification.

Chairman: I only asked you because I thought you said it was to be a necessary qualification.

Sir Maneckjee Dadabhoy: Perhaps I may be allowed to correct myself there.

Sir Tej Bahadur Sapru: Would you allow a poor man to become Prime Minister in India?

Sir Maneckjee Dadabhoy: Certainly.

Sir Tej Bahadur Sapru: How would he get in in the first place?

Sir Maneckjee Dadabhoy: He could get into the Assembly. Prime Ministers generally come in all countries from the House of Representatives and not from the Upper House.

Then, as regards disqualifications, I should like to say in the first place that whatever rules may be framed in the matter of disqualifications should apply equally to British India and to the Indian States. There should be no distinction between them in this matter.

With regard to age, I am quite in agreement with my friend, Sir Tej Bahadur Sapru, in thinking that we should keep the age limit at 30 for the Upper House; and in fact I should be glad if it were found possible to raise it to 35 or even to 40. We want men of ripe knowledge and experience and with worldly training and ripe judgment to sit in the Upper House, so that they may bring lustre to their country and glory to themselves.

As regards political disqualifications, I feel very strongly on that subject; and I think that the rule regarding political disqualifications should be observed with unbending and unrelenting severity. I think it is essential. The events which have taken place in India during the last twelve months—deplorable events which have upset the good government of the country, and when we have found young men from good families committing political dacoities and other serious offences—are they not a justification, and an absolute justification, for such disqualification? It is difficult to define what a political disqualification is. I would certainly leave alone offences or convictions connected with passive disobedience. I would leave picketing alone, and I would leave boycotting unaccompanied by violence alone. These trespasses I would leave alone; but in the case of all offences, not only in which moral turpitude is involved, but which are of a criminal nature or character, I think the perpetrators of such offences should be prevented for all times from coming into our Legislative Councils.

There is another suggestion which has not been referred to and to which I may be permitted to refer. I also think that continuous absence during the whole session in the case of an elected member should be a disqualification necessitating compulsory resignation.

Sir Tej Bahadur Sapru : What about a nominated member?

Sir Maneckjee Dadabhoy : I will come to that. I know of cases where, for a whole session, members have absented themselves from the Assembly and from the Council; and I think it is only right that a rule to this effect should be framed. My friend, Sir Tej Bahadur Sapru, with his shrewdness, has asked me what is to be done in the case of the nominated members. My Lord, in the case of an election a man is sent to the Assembly or the Council of State by a large number of representatives or voters. He cannot go and ask for permission from every one of those voters to stay away. He cannot ask permission from them to abstain from his work in the present state of unorganised parties representing the interests of various constituencies; but in the case of a nominated member, if he absents himself without the sanction of Government in the first instance, he will not be re-nominated.

Mr. Iyengar : That is his constituency.

Sir Maneckjee Dadabhoy : And in the case of a nominated member, if a man has any sense of decency and honour he will at once write and obtain the permission of Government if he is unable to be present. But the same power it is impossible to exercise in the case of an elected member, and I therefore think it is essentially necessary that a continuous abstention during an entire session should be a good, sound and valid ground for disqualification.

Sir, I do not wish to occupy the time of this Conference by a further discussion of some of the matters to which I would like to refer. I know I shall have several other opportunities of placing my views before the Conference, and I shall therefore conclude by thanking Your Lordship for the indulgence you have extended to me in allowing me to express my views at considerable length.

Dr. Ambedkar : My Lord Chancellor, I am speaking for the first time as a member of the Federal Structure Committee. Every new member, in availing himself of the very kind opportunity that you gave him for making a general statement of his position with regard to the problems which this Committee will have to face, has given expression to his sense of appreciation of the great services which you, Sir, have rendered to this Committee; and he has also added a proviso making it plain that the safety of his own community, or of the interests he represented, was a condition precedent to any consent that he might give to the establishment of responsibility in the Central Government. Lord Chancellor, if I do not follow my predecessors in this, it is not because I have no feelings to express on the matter. On the contrary, my feelings

are very deep; and if I do not give expression to them it is becau… I prefer to obey the mandate that you gave us this morning, th… all these matters shall be taken as understood.

With these few preliminary remarks I propose to submit my views on the various sub-heads included under Head No. 2. In doing so I do not wish to follow the order of the sub-heads as they are given in the Memorandum which has been circulated to us, nor do I propose to express my views on every item that has been included in that Memorandum. I will only touch upon the topics on which I think I have a definite opinion to express and a definite contribution to make.

The first thing that I propose to deal with is the subject of the composition of the Federal Legislature; and before I proceed with that subject let me make my position clear with respect to the question as to whether the Federal Legislature of future India shall be unicameral or bicameral. Now, I confess at the very outset that I have never been a believer in a bicameral system. I have never accepted that the Second Chamber has any utility at all; but I also agree that, although I have that conviction in me, there are many others who do not accept that position, and I know that in this Conference it will not be possible for us to convince them that a Second Chamber is not necessary. Secondly, I also feel that, if the relations of the two Chambers are properly regulated—and there are ways by which the fangs of a Second Chamber could be clipped by proper safeguards so that it could be made safe for a democratic government in India—I do not wish to raise any objection to a bicameral system being introduced in India

Having said that, let me turn to the question of the representation of the British Indian Provinces in the Federal Legislature of India. In doing that, the first question with which we are concerned and confronted is whether the representation shall be direct or whether the representation shall be indirect. It seems to me that, so far as the Lower Chamber of the Federal Assembly is concerned, there can be no two opinions. It must be constituted by direct election. I am quite conscious of the fact that the Simon Commission, in dealing with this question, recommended that the Lower Chamber, instead of being constituted by direct election, should be constituted by indirect election; and in support of that they observed that, as a matter of fact, there was no distinction between direct election and indirect election, and that indirect election was only direct election one step removed. Now, logically, perhaps, that position is correct; but I submit that psychologically there is a great difference between direct election and indirect election. In my opinion, what is of the utmost importance is that the people of India should be impregnated with the idea that, in the last resort, they are responsible for the good government of the country. And I venture to suggest that, unless the Indian citizen is made to feel that it is he who can make and unmake the government, we shall never be able to succeed in establishing the true foundations of a responsible government in

India. Now, if my suggestion is correct, then it that we must have some system of election whereby a contact will be established between the government and the of the country; and therefore I submit that the blind of direct election between the Central Government and the must be removed, and they must be allowed to see the ef their vote upon the government of the country and upon welfare. I can, under no circumstances, consent to a system will not provide for direct election to the Lower Chamber o Federal Assembly.

Coming to the constitution of the Upper Chamber, I app of the method suggested by the Federal Structure sub-Commi —namely, that it should be constituted by the method of indi election in which the Provincial Legislative Councils will fo the constituencies. I approve of the system because the electi instead of being carried out by the watertight methods of separ or communal electorates, will be carried out on the basis of pr portional representation. Now, I think it is a great advantag in a country like India, where, unfortunately, owing to vario circumstances, we cannot avoid the separate representation o distinct communities—where we cannot ignore safeguarding the interests of various groups—to have in the constitution a Chamber which will be non-communal, a Chamber the members of which will have a mandate which will not be drawn exclusively from one particular community, but a mandate which will be broad-based. There is only one comment, however, that I would like to make on this proposal. I have no objection to—indeed, as I have stated, I approve of—the system of proportional representation; but there is one point which I think ought to be mentioned. All members of the Committee are aware that the minorities in India are not only anxious to have their interests and their communities represented in the various legislatures, but they are also insistent upon the fact that they shall get a certain minimum quantum of representation. Now, my fear is that, although proportional representation may give them some representation in the Upper Chamber, we do not know—for we can never be certain of the results of proportional representation—we do not know that the various communities will succeed in getting the quantum of representation which they want. I would therefore like to suggest that, to this recommendation of the F[illegible] ucture sub-Com[illegible] a proviso something on the lines [illegible] 35 of the Au[illegible] titution should be added. That [illegible] course, does [illegible] of the representation of the co[illegible] speaks of [illegible] tation [illegible] litical parties. Bu[illegible] sily made [illegible] to the [illegible] ion of the comr[illegible] is how the [illegible]:—

[illegible] he members [illegible] Council [illegible] sti- [illegible] ll be elect[illegible] Dic[illegible] their own [illegible] accordi[illegible] in- [illegible] proportion[illegible] but [illegible] seat [illegible] the P[illegible] ond [illegible] her

if ultimately it is found that that concession or that schem going to compromise the system of responsibility or is going whittle down the system of responsibility at which we are all a ing.

Now, applying that test, it follows that you cannot consent the claim of the Princes for nomination of their representatives.

Colonel Haksar: In which House?

Dr. Ambedkar: In either House, and for this reason. First of all, anyone who reads the Report of the Federal Structure sub-Committee will find that not only do the Princes want to come into the Legislature, but they also want to be represented in the Central Executive of the country, and it is only right that the Princes should have that objective, because they would gain nothing by merely coming into the Legislature—their real gain consists in having a hand in the Executive of the country. Now bearing that point in mind, what I say is this—that you have in the Federal Structure sub-Committee laid down that the system of responsibility in the Central Legislature will be a system of collective responsibility. If the representatives of British India are going to come into the Federal Legislature by election, and if the representatives of the Indian States are coming into the Federal Legislature by nomination with definite instructions from those who will nominate them, I, for one, fail to understand how the system of collective responsibility—with divided mandates, with different instructions—is going to work in the future constitution of the country.

There is also another way in which the system of responsibility is going to be affected by the nomination of the Princes to the Federal Legislature. Sir Tej Bahadur Sapru yesterday very rightly condemned the existence of the official nomination bloc, and for the simple reason that, being at the beck and call of the Executive, the nominated bloc makes the Executive irresponsible to the Legislature. I think that is the gist of his argument for not supporting the official bloc. Now, the question that I wish to raise is this: Are we quite certain that the Princes' nominees to the Federal Legislature will not play the part of the official bloc? Speaking for myself, I will be quite candid and say that I am not certain about it; and I will make my position quite clear as to why I say that. We all know that the Princes carry on the administration of their States under what is called the system of paramountcy, and I think we all know that one of the incidents of the doctrine of paramountcy is that the Paramount Power claims the right of advising the Princes on the matter of important appointments.

H.H. The Maharaja of Bikaner: Not in all. It may be in one or two cases.

Dr. Ambedkar: Well, I can only say that that is what the Committee stated.

Colonel Haksar: Did they?

H.H. The Maharaja of Bikaner: Did they? If they did they were wrong, as they were in some other respects.

Dr. Ambedkar: I think I am right; at least, that is how I have understood it. Add to this the fact that paramountcy in the new constitution is contemplated to remain a reserved subject. Now, supposing the Political Department, which will be exercising the powers of paramountcy, claims the right to advise the Princes in the matter of nomination to the Federal Legislature, what is the effect?

H.H. The Maharaja of Bikaner: It cannot and would not; and that would not be accepted by the States.

Dr. Ambedkar: What I say is this. Suppose the Political Department claims that the nomination of the Princes to the Federal Legislature is an important appointment, and as such the Political Department must exercise its right to advise the Princes —what happens? So far as I am able to judge, so far as I am able to conjecture, the only result will be that the Princes' nomination will in fact be nothing less and nothing else than the official bloc replaced in another form.

Colonel Haksar: It does not happen.

Dr. Ambedkar: And now, at this stage, My Lord Chancellor, I would like to say one thing . . . .

Sir Maneckjee Dadabhoy: But you have not given us the solution of that problem.

Dr. Ambedkar: I say election, absolutely.

Colonel Haksar: Dr. Ambedkar, would you at some time or other give us the reference to the Butler Committee's Report?

Dr. Ambedkar: I will try.

Colonel Haksar: Because you credit them with the assertion that the Political Department makes appointments in the important States.

Dr. Ambedkar: Well, Colonel Haksar, we will not wander into a controversy; but if paramountcy is not brought into operation many other influences could be brought to bear.

Colonel Haksar: You are departing from your position.

Dr. Ambedkar: No, I am not. I will give you the reference.

Now, My Lord Chancellor, there is just this one observation that I would like to make—which I have no doubt made earlier, but I would like to emphasise it. Of course, we are all trying to work out a federal constitution for India as a whole. But I would also like to emphasise that we are not here merely for the purpose of getting a change in the form of Government; a change from a unitary government to a federal government.

Chairman: Some people say: whatever be best administered is best.

party to any system which permits the representation of the States by nomination.

Now, My Lord Chancellor, I will take up the other head of discussion, namely, representation of special interests.

Chairman: You have got to No. (v)—provision made for the representation by special constituencies of special interests.

Dr. Ambedkar: The first thing I would like to make clear is this: I do not want the Depressed Classes to be treated as a special interest. I want the Depressed Classes to be treated as a separate community for political purposes in the same way as the Muhammadans or the Christians are treated. They must have the same right of representation, not only in the Provincial Legislative Councils, but also in both Houses of the Central Legislature.

Chairman: When you say the same rights, do you mean to say they are to have the same number as the others?

Dr. Ambedkar: No; the numbers that they will be entitled to on the basis of the principle that may be adopted in common with all.

Chairman: You said the same. Thank you.

Dr. Ambedkar: Now I come to the other interests which have so far been recognised; namely, Trade, Commerce, Landholders and Universities.

Dr. Shaja'at Ahmad Khan: Not Universities?

Dr. Ambedkar: No, we have not got Universities. I am afraid I cannot give my consent to the representation of these special interests. First of all, I do not quite understand why, for instance, a landholder needs any special representation. I do not know what are the difficulties and disabilities from which he would suffer if he were to stand out in a general constituency and seek the suffrages of his people. There is nothing to prevent him from doing that. In all other countries—for instance, in England and all European countries—no provision is made, I am sure, for the special representation of such interests as Trade, Commerce and Landholders; they are allowed to find their place through the general electorates, and I think the same system should be adopted in India. My further objection to making any special provision for the representation of these interests is this: first of all, these interests get themselves represented by a very, very narrow constituency; it is almost by a clique. Now, if their voting power were confined to matters which concern them, the evil would be comparatively small. But they do not only come on the basis of this restricted constituency into the Legislative Council; they vote upon all and sundry matters that come before the Legislative Council. One of the things that I have noticed in the Bombay Legislative Council is this, that we have there constituencies for Trade and Commerce. Now Trade and Commerce in the Bombay Presidency have been the monopoly of a special community which I am sorry to say is the most orthodox community known to me.

Mr. Jayakar: Politically?

Dr. Ambedkar: Socially. Now, such members get these elected pocket constituencies in order to get themselves into the Legislative Council. Then, if any progressive measure is brought forward, they come and side with the orthodox and thereby defeat the ends of freedom and progress. I therefore object to it. If any such provision were necessary, I would make this concession—that any such interest, for instance Trade, Commerce or Landholders, may have the right to be heard in the Legislative Assembly or the Upper Chamber whenever a Bill affecting their particular interest is being discussed. The right of audience may be granted, but there is no necessity for granting them membership of the Legislature or the power of voting on any Bill that comes before the Legislature.

With regard to Labour I would say this. I do not know whether my friend Mr. Joshi will agree with me or not; but my own view is that, if the system of adult suffrage comes into operation—and I hope that, with the help and support of Mahatma Gandhi, we shall be able to carry it through in his Conference—then there may perhaps be no necessity for the special representation of Labour; but if we adopt a system of representation which keeps out a large body of the working classes from the constitution, so that they cannot control the Government and influence it for bringing about their welfare and their prosperity, then there would certainly be a necessity for making special provision for the representation of Labour, and I think that could be done by recognising the various unions as the electoral colleges for the purposes of such representation.

The next topic to which I propose to refer is the question of nominated members. I suppose—I am not sure—that the object of having a bloc of nominated members in the Federal Legislature is principally to give support to what are called Crown subjects, or what in the Provinces, under the Dyarchical System, were called reserved subjects. First of all I should like to make it plain that I have a great horror of this nominated bloc of officials. If there is any institution which, in my opinion, has absolutely destroyed the system of responsibility in the Provincial Governments, which was sought to be introduced by the Montagu-Chelmsford Reforms, it is this institution of the nominated official bloc. It is this which has perverted the whole system. It is this group which has made possible, in the Provinces, government by a minority against a majority. It is this group which has made alliances with all sorts of people and groups—not necessarily groups which needed its help or support, but groups which were ready to sell themselves for petty gains. I have, as I say, the strongest objection to a nominated official bloc.

My next submission is that this nominated official bloc is really not necessary at all for the purpose of lending support to what are called the Crown subjects. In the Provincial Constitution, where we have now the system of reserved subjects, we have various methods of supporting and safeguarding these reserved subjects. First of all, under Section 72-D, we have a person in charge of these reserved subjects who is non-removable and whose salary is

party to any system which permits the representation of the States by nomination.

Now, My Lord Chancellor, I will take up the other head of discussion, namely, representation of special interests.

Chairman: You have got to No. (v)—provision made for the representation by special constituencies of special interests.

Dr. Ambedkar: The first thing I would like to make clear is this: I do not want the Depressed Classes to be treated as a special interest. I want the Depressed Classes to be treated as a separate community for political purposes in the same way as the Muhammadans or the Christians are treated. They must have the same right of representation, not only in the Provincial Legislative Councils, but also in both Houses of the Central Legislature.

Chairman: When you say the same rights, do you mean to say they are to have the same number as the others?

Dr. Ambedkar: No; the numbers that they will be entitled to on the basis of the principle that may be adopted in common with all.

Chairman: You said the same. Thank you.

Dr. Ambedkar: Now I come to the other interests which have so far been recognised; namely, Trade, Commerce, Landholders and Universities.

Dr. Shaja'at Ahmad Khan: Not Universities?

Dr. Ambedkar: No, we have not got Universities. I am afraid I cannot give my consent to the representation of these special interests. First of all, I do not quite understand why, for instance, a landholder needs any special representation. I do not know what are the difficulties and disabilities from which he would suffer if he were to stand out in a general constituency and seek the suffrages of his people. There is nothing to prevent him from doing that. In all other countries—for instance, in England and all European countries—no provision is made, I am sure, for the special representation of such interests as Trade, Commerce and Landholders; they are allowed to find their place through the general electorates, and I think the same system should be adopted in India. My further objection to making any special provision for the representation of these interests is this: first of all, these interests get themselves represented by a very, very narrow constituency; it is almost by a clique. Now, if their voting power were confined to matters which concern them, the evil would be comparatively small. But they do not only come on the basis of this restricted constituency into the Legislative Council; they vote upon all and sundry matters that come before the Legislative Council. One of the things that I have noticed in the Bombay Legislative Council is this, that we have there constituencies for Trade and Commerce. Now Trade and Commerce in the Bombay Presidency have been the monopoly of a special community which I am sorry to say is the most orthodox community known to me.

Mr. Jayakar: Politically?

Dr. Ambedkar: Socially. Now, such members get these easy pocket constituencies in order to get themselves into the Legislative Council. Then, if any progressive measure is brought forward, they come and side with the orthodox and thereby defeat the ends of freedom and progress. I therefore object to it. If any such provision were necessary, I would make this concession—that any such interest, for instance Trade, Commerce or Landholders, may have the right to be heard in the Legislative Assembly or the Upper Chamber whenever a Bill affecting their particular interest is being discussed. The right of audience may be granted, but there is no necessity for granting them membership of the Legislature or the power of voting on any Bill that comes before the Legislature.

With regard to Labour I would say this. I do not know whether my friend Mr. Joshi will agree with me or not; but my own view is that, if the system of adult suffrage comes into operation—and I hope that, with the help and support of Mahatma Gandhi, we shall be able to carry it through in his Conference—then there may perhaps be no necessity for the special representation of Labour; but if we adopt a system of representation which keeps out a large body of the working classes from the constitution, so that they cannot control the Government and influence it for bringing about their welfare and their prosperity, then there would certainly be a necessity for making special provision for the representation of Labour, and I think that could be done by recognising the various unions as the electoral colleges for the purposes of such representation.

The next topic to which I propose to refer is the question of nominated members. I suppose—I am not sure—that the object of having a bloc of nominated members in the Federal Legislature is principally to give support to what are called Crown subjects, or what in the Provinces, under the Dyarchical System, were called reserved subjects. First of all I should like to make it plain that I have a great horror of this nominated bloc of officials. If there is any institution which, in my opinion, has absolutely destroyed the system of responsibility in the Provincial Governments, which was sought to be introduced by the Montagu-Chelmsford Reforms, it is this institution of the nominated official bloc. It is this which has perverted the whole system. It is this group which has made possible, in the Provinces, government by a minority against a majority. It is this group which has made alliances with all sorts of people and groups—not necessarily groups which needed its help or support, but groups which were ready to sell themselves for petty gains. I have, as I say, the strongest objection to a nominated official bloc.

My next submission is that this nominated official bloc is really not necessary at all for the purpose of lending support to what are called the Crown subjects. In the Provincial Constitution, where we have now the system of reserved subjects, we have various methods of supporting and safeguarding these reserved subjects. First of all, under Section 72-D, we have a person in charge of these reserved subjects who is non-removable and whose salary is

non-votable; secondly, the Governor has been given the power of certifying expenditure which he thinks is necessary for the purpose of safeguarding the reserved subjects; thirdly, the Governor has the power to certify Bills which he thinks are necessary for the purpose of maintaining the efficiency of the reserved subjects; and lastly, the Governor has the power to veto any Bill to which he has an objection. My submission, Lord Chancellor, is that the safeguards which I have just mentioned—namely, non-removability of the person in charge of the reserved subjects, the non-votable character of his salary, the power of certifying expenditure which the Governor possesses, the power of certifying Bills necessary for the safety of the reserved subjects, and the ultimate power of the Governor to veto a Bill—are quite sufficient, in my opinion, to maintain the integrity of what are called Crown subjects.

Sir Tej Bahadur Sapru: May I ask you one question at this stage? You suggest there should be power of certification?

Dr. Ambedkar: I do not suggest there should be power of certification; I will deal with that matter at a later stage. What I am saying is that these are other alternative methods which are provided in the constitution beside the nominated official bloc. That is my argument. My submission is that, when you have such abundance of legislative and executive powers in the Government to safeguard what are called Crown subjects, there is no necessity for having an official bloc in the Legislative Council at all.

Secondly, what I say is this, that by having a nominated official bloc you disguise and conceal the real character of what is occurring. There are many measures which the Legislative Council probably would not have passed if the nominated official bloc had not been there, and which the Governor would have been obliged to certify or carry through in some other way under his special powers; but, because of the presence of a nominated official bloc, you have the anomalous position of giving the appearance to the outside world that the Legislative Council is working normally on the basis of majority rule, when, as a matter of fact, the decisions have been taken by a minority with the help of the official bloc. I submit, therefore, there is no use in the future constitution of India for this nominated official bloc.

There is one last subject to which I should like to refer, namely, the question of the Oath. This question, in my opinion, is a very big one; and it is a question which opens up another big question, namely, that of common citizenship for India. In the short time which I have at my disposal I do not think it will be possible for me to discuss the whole subject; and I would therefore request that a special occasion may be provided when this question can be thrashed out, because I hold the view that there can be no real federation unless there is common citizenship. It would be a misnomer to call a constitution a federal constitution if it did not provide for a common citizenship. This, as I say, is a point which I cannot develop at the moment because there is not sufficient time.

(The Committee adjourned at 4-10 p.m.)

PROCEEDINGS OF THE TWENTY-FOURTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON THURSDAY, THE 17TH SEPTEMBER 1931, AT 11 A.M.

HEAD 2.

Questions connected with the Election of Members of the Federal Legislature—(continued).

Sir Sultan Ahmed: Lord Chancellor, Eloquent tributes have already been paid by the new members of the Federal Structure Committee to the way in which Your Lordship conducted the proceedings of the last Session. I, who have been familiar with Your Lordship's patience, skill and guidance, need not, therefore, add anything to them; yet there is one thing which I learnt yesterday which I had not learnt before, and that makes me feel that it is my duty once again to repeat what I submitted last year. I learnt yesterday for the first time that Your Lordship's fascinating smile is sometimes a sign to us to continue and sometimes a very polite sign that we must stop.

Chairman: May I say you are a thought reader.

Sir Sultan Ahmed: Having said that, My Lord there is one other preliminary observation which I may be permitted to make. We of the Federal Structure sub-Committee unanimously resolved that the best form of the future government of India would be the federal system of government. Since we last met in England we have met again after very careful consideration of that very question in India, and it is a matter of extreme satisfaction to us that the conclusion at which we arrived then has been confirmed by all who are interested in the future advance of India. Mr. Gandhi, who is, more than anyone else, anxious to see the responsibility at the Centre vested in India, has accepted the principle of federation. I have not heard a single speech since last Monday by the new members to show me that the idea of federation is one which is not acceptable. Before I go further I must once again express my gratitude to the Princes who voluntarily and merely for patriotic reasons set the ball rolling last year and accepted the principle of federation.

My Lord, the first sub-head under Head No. 2 requires us to answer as to the method of selection, for each Chamber of the Federal Legislature, of the representatives of individual States and of groups of States. I respectfully submit that it would be proper, expedient and wise that the decision on this matter should be left entirely to the Princes. Some of us expressed an opinion last year, which was repeated this year, that, after all is said and done, once they decide to come to the Lower House, their representatives will come in contact with the popular representatives of British India; and we have absolutely no doubt as to what the effect of that contact in course of time will be. If any assurance were needed that the representation in the Lower Chamber will be such as will satisfy the requirements of the situation, we have got the assurance from

Their Highnesses and the representatives of the States in this Committee. My Lord, what greater assurance is necessary than was afforded to us by His Highness of Bikaner after consultation with His Highness of Bhopal? What greater assurance is necessary than was given to us by my friend, Sir Akbar Hydari? And the last assurance, given by Sir Mirza Ismail, is so clear that, in my opinion, it is absolutely useless to go further than that. Sir Mirza Ismail said:—

> "Each State may be left to determine for itself the best method of selecting its representatives having regard to the conditions and circumstances existing in it. The States will no doubt realise that the best and the most approved method of sending representatives to a popular Chamber is by popular election which may be either direct or indirect. This is the goal which they should keep constantly in view, to be reached as quickly as possible. I do not think that this Committee need go further than this; the rest may well be left to time and the inexorable logic of events."

I respectfully submit that this Committee, considering the materials at its disposal, can do no better than to leave this mater entirely in the hands of the Princes.

Item (ii) of Head 2 asks us to consider the question:—

> "If the method of selection is to be nomination, by what method is a State's representative's seat to be vacated otherwise than by death or on dissolution?"

I suggest, Lord Chancellor, that the following may be the other methods:—(1) bankruptcy; (2) if the member fails to attend two consecutive sittings of the assembly (I have got this from Section 31 of the North America Act and also from Section 53 or 55 of the Australian Act); and (3) if the member has been convicted of treason or any offence involving moral turpitude. The objection was taken by some of our friends on this side that it would be very difficult to define "moral turpitude", because it may be involved in political crime also. In my opinion, however, if an offence involves moral turpitude it does not matter what the motive of the offence—political or otherwise—may be; as long as the offence involves moral turpitude that is sufficient. A political dacoity, for instance, will remain a dacoity whether it is committed for political ends or from any other base motive. In my submission it makes no difference what the motive may be. Your Lordship will find a similar provision in other federal constitutions.

Item (iii) is:—

> "Are the British Indian representatives in the Upper Chamber (other than those, if any, representing special interests), to be—(*a*) directly elected by territorial constituencies, (*b*) indirectly elected by the Lower Chamber, (*c*) indirectly elected by the Provincial Legislatures?"

I should have thought that we would be absolutely un[illegible]ous in answering this question; that is, [illegible] British Indian r[illegible]

in the Upper Chamber should be indirectly elected by the Provincial Legislatures. We were unanimous on the last occasion; and, but have been unanimous on this occasion also. We, who have had experience of practising at the Bar, know that if we have to cite an authority for a false proposition there is not much difficulty in find- ing an authority. The difficulty comes in when we come to apply that authority. My learned friend forgot primarily that we are not discussing the constitution of the Council of the State. He was thinking of the Council of which he has been such a distinguished member for the last eleven years. I would respectfully ask him to forget that distinguished assembly for a time, and think of the new Federal Assembly that we propose to establish in India Primarily that was the fallacy, but he found an authority in the Despatch of the Government of India which had nothing to do with the Federal Constitution at all. All the arguments advanced in the Government of India's Despatch would be most usefully used by my learned friend, and I myself would use them when I came to deal with the question of representation in the Indian Lower Chamber; but there are very few constitutions in the world which have the federal system as the foundation, which have direct election of members in the Upper Chamber. In fact, when we come to deal with the question of representation in the Lower Chamber, doubts have been expressed whether, under the conditions prevailing in India, it is wise to have direct representa- tion even there. The difficulty which has been pointed out against direct election in the Lower Chamber will apply more forcibly against direct representation in the Upper Chamber, considering the paucity of the members in the Upper Chamber and the wide range of area and population which the representatives will have to cover. I have, therefore, absolutely no hesitation, My Lord Chancellor, in submitting that the representation in the Upper Chamber should be indirectly by the Provincial Legislatures.

As regards the representation in the Lower Chamber I am constrained to come to the conclusion that this can only be done by the direct method. I have advisedly used the word "constrained" because I have seen the force of the argument against this form of election in the Report of the sub-Committee I have carefully considered the difficulties, which have been pointed out in the Report, of this form of election. I have also considered the various devices which were suggested as alternatives to direct lection; and, in response to the invitation which Your Lordship ill find in the last few lines of paragraph 32 I have endeavoured o explore other methods before a final decision is given. I have onsidered whether election through the district boards and munici- alities will be desirable. I have considered whether election rough different headmen or different groups of villages will be sirable. In fact I have considered other methods also; but imately I have come to the conclusion that, after all is said and e, apart from the fact that indirect election will be unaccepable he people of India, and in spite of the difficulties which have

Their Highnesses and the representatives of the States in this Committee. My Lord, what greater assurance is necessary than was afforded to us by His Highness of Bikaner after consultation with His Highness of Bhopal? What greater assurance is necessary than was given to us by my friend, Sir Akbar Hydari? And the last assurance, given by Sir Mirza Ismail, is so clear that, in my opinion, it is absolutely useless to go further than that. Sir Mirza Ismail said:—

> "Each State may be left to determine for itself the best method of selecting its representatives having regard to the conditions and circumstances existing in it. The States will no doubt realise that the best and the most approved method of sending representatives to a popular Chamber is by popular election which may be either direct or indirect. This is the goal which they should keep constantly in view, to be reached as quickly as possible. I do not think that this Committee need go further than this; the rest may well be left to time and the inexorable logic of events."

I respectfully submit that this Committee, considering the materials at its disposal, can do no better than to leave this mater entirely in the hands of the Princes.

Item (ii) of Head 2 asks us to consider the question:—

> "If the method of selection is to be nomination, by what method is a State's representative's seat to be vacated otherwise than by death or on dissolution?"

I suggest, Lord Chancellor, that the following may be the other methods:—(1) bankruptcy; (2) if the member fails to attend two consecutive sittings of the assembly (I have got this from Section 31 of the North America Act and also from Section 53 or 55 of the Australian Act); and (3) if the member has been convicted of treason or any offence involving moral turpitude. The objection was taken by some of our friends on this side that it would be very difficult to define "moral turpitude", because it may be involved in political crime also. In my opinion, however, if an offence involves moral turpitude it does not matter what the motive of the offence—political or otherwise—may be; as long as the offence involves moral turpitude that is sufficient. A political dacoity, for instance, will remain a dacoity whether it is committed for political ends or from any other base motive. In my submission it makes no difference what the motive may be. Your Lordship will find a similar provision in other federal constitutions.

Item (iii) is:—

> "Are the British Indian representatives in the Upper Chamber (other than those, if any, representing special interests), to be—(*a*) directly elected by territorial constituencies, (*b*) indirectly elected by the Lower Chamber, (*c*) indirectly elected by the Provincial Legislatures?"

I should have thought that we would be absolutely unanimous in answering this question; that is, the British Indian representatives

in the Upper Chamber should be indirectly elected by the Provincial Legislatures. We were unanimous on the last occasion; and, but for the characteristic speech of Sir Maneckjee Dadabhoy, we should have been unanimous on this occasion also. We, who have had experience of practising at the Bar, know that if we have to cite an authority for a false proposition there is not much difficulty in finding an authority. The difficulty comes in when we come to apply that authority. My learned friend forgot primarily that we are not discussing the constitution of the Council of the State. He was thinking of the Council of which he has been such a distinguished member for the last eleven years. I would respectfully ask him to forget that distinguished assembly for a time, and think of the new Federal Assembly that we propose to establish in India. Primarily that was the fallacy, but he found an authority in the Despatch of the Government of India which had nothing to do with the Federal Constitution at all. All the arguments advanced in the Government of India's Despatch would be most usefully used by my learned friend, and I myself would use them when I came to deal with the question of representation in the Indian Lower Chamber; but there are very few constitutions in the world which have the federal system as the foundation, which have direct election of members in the Upper Chamber. In fact, when we come to deal with the question of representation in the Lower Chamber, doubts have been expressed whether, under the conditions prevailing in India, it is wise to have direct representation even there. The difficulty which has been pointed out against direct election in the Lower Chamber will apply more forcibly against direct representation in the Upper Chamber, considering the paucity of the members in the Upper Chamber and the wide range of area and population which the representatives will have to cover. I have, therefore, absolutely no hesitation, My Lord Chancellor, in submitting that the representation in the Upper Chamber should be indirectly, by the Provincial Legislatures.

As regards the representation in the Lower Chamber, I am constrained to come to the conclusion that this can only be done by the direct method. I have advisedly used the word "constrained" because I have seen the force of the argument against this form of election in the Report of the sub-Committee. I have carefully considered the difficulties, which have been pointed out in the Report, of this form of election. I have also considered the various devices which were suggested as alternatives to direct election; and, in response to the invitation which Your Lordship will find in the last few lines of paragraph 32, I have endeavoured to explore other methods before a final decision is given. I have considered whether election through the district boards and municipalities will be desirable. I have considered whether election through different headmen or different groups of villages will be desirable. In fact I have considered other methods also; but ultimately I have come to the conclusion that, after all is said and done, apart from the fact that indirect election will be unaccepable to the people of India, and in spite of the difficulties which have

Their Highnesses and the representatives of the States in this Committee. My Lord, what greater assurance is necessary than was afforded to us by His Highness of Bikaner after consultation with His Highness of Bhopal? What greater assurance is necessary than was given to us by my friend, Sir Akbar Hydari? And the last assurance, given by Sir Mirza Ismail, is so clear that, in my opinion, it is absolutely useless to go further than that. Sir Mirza Ismail said:—

> "Each State may be left to determine for itself the best method of selecting its representatives having regard to the conditions and circumstances existing in it. The States will no doubt realise that the best and the most approved method of sending representatives to a popular Chamber is by popular election which may be either direct or indirect. This is the goal which they should keep constantly in view, to be reached as quickly as possible. I do not think that this Committee need go further than this; the rest may well be left to time and the inexorable logic of events."

I respectfully submit that this Committee, considering the materials at its disposal, can do no better than to leave this mater entirely in the hands of the Princes.

Item (ii) of Head 2 asks us to consider the question:—

> "If the method of selection is to be nomination, by what method is a State's representative's seat to be vacated otherwise than by death or on dissolution?"

I suggest, Lord Chancellor, that the following may be the other methods:—(1) bankruptcy; (2) if the member fails to attend two consecutive sittings of the assembly (I have got this from Section 31 of the North America Act and also from Section 53 or 55 of the Australian Act); and (3) if the member has been convicted of treason or any offence involving moral turpitude. The objection was taken by some of our friends on this side that it would be very difficult to define "moral turpitude", because it may be involved in political crime also. In my opinion, however, if an offence involves moral turpitude it does not matter what the motive of the offence—political or otherwise—may be; as long as the offence involves moral turpitude that is sufficient. A political dacoity, for instance, will remain a dacoity whether it is committed for political ends or from any other base motive. In my submission it makes no difference what the motive may be. Your Lordship will find a similar provision in other federal constitutions.

Item (iii) is:—

> "Are the British Indian representatives in the Upper Chamber (other than those, if any, representing special interests), to be—(*a*) directly elected by territorial constituencies, (*b*) indirectly elected by the Lower Chamber, (*c*) indirectly elected by the Provincial Legislatures?"

I should have thought that we would be absolutely unanimous in answering this question; that is, the British Indian representatives

in the Upper Chamber should be indirectly elected by the Provincial Legislatures. *We were unanimous on the last occasion*; and, but *for the characteristic speech of Sir Maneckjee Dadabhoy*, we should have been unanimous on this occasion also. We, who have had experience of practising at the Bar, know that if we have to cite an authority for a false proposition there is not much difficulty in finding an authority. The difficulty *comes in* when we come to apply that authority. *My learned friend forgot* primarily that we are not discussing the constitution of the Council of the State. He was thinking of the Council of which he has been such a distinguished member for the last eleven years. I would respectfully ask him to *forget that distinguished assembly for a time*, and think of the *new Federal Assembly that we propose to establish in India*. Primarily that was the fallacy, but he found an authority in the Despatch of the Government of India which had nothing to do with the Federal Constitution at all. All the arguments advanced in the Government of India's Despatch would be most usefully used by *my learned friend, and* I myself would use them when I came to deal with the question of representation in the Indian Lower Chamber; but there are very few constitutions in the world which have the federal system as the foundation, which have direct election of members in the Upper Chamber. In fact when we come to deal with the question of representation in the Lower Chamber, *doubts have been* expressed *whether*, under the conditions prevailing in India, it is wise to have direct representation even there. The difficulty which has been pointed out against direct election in the Lower Chamber will apply more forcibly against direct representation in the Upper Chamber, considering *the paucity of the members in the Upper Chamber* and the wide range of area and population which the representatives will have to cover. I have, therefore, absolutely no hesitation, My Lord Chancellor, in submitting that the representation in the Upper Chamber should be indirectly, by the Provincial Legislatures.

As regards the representation in the Lower Chamber, I am constrained to come to the conclusion that this can only be done by the direct method. I have advisedly used the word "constrained" because I have seen the force of the [illegible] *against this form of election in the Report of the* [illegible] I have carefully considered the difficulties, which have [illegible] out in the Report, of this form of election. I have [illegible] the various devices which were suggested as [illegible] election; and, in response to the invitation which [illegible] will find in the last *few lines of* paragraph [illegible] *to explore other* methods before a final [illegible] considered whether election through the [illegible] palities will be desirable. I have [illegible] through different headmen or [illegible] desirable. In fact I have [illegible] ultimately I have *come to the* [illegible] done, apart from the fact that [illegible] to the people of India, and [illegible]

been pointed out, perhaps it will be more expedient to adopt the direct method for the Lower House. We are, My Lord, trying to evolve a constitution which will be best suited to the conditions of India; and, if we have to make a departure from the established rule of direct election in the Lower House as in the other constitutions in the world, there must be very solid ground for doing so; and, in spite of the difficulties that have been pointed out, I have now come to this conclusion—that direct election would be the best method. I therefore answer the fourth question by saying that the British Indian representatives in the Lower House should be directly elected by territorial constituencies.

I now come to (v):—

> "Is provision to be made for the representation by special constituencies of special interests, other than communal interests, and if so, for which interests—(*a*) in the Upper Chamber, (*b*) in the Lower Chamber?"

My answer is, in the words of the Report, that—

> "Special interests, namely the Depressed Classes, Indian Christians, Europeans, Anglo-Indians, Landlords, Commerce (European and Indian) and Labour,"

should have representation in both Chambers.

Item No. (vi):—

> "Are any special qualifications to be laid down for eligibility for membership of the Upper House?"

I would answer this question, My Lord, by saying firstly that the minimum age should be 30. There should be a property qualification, and all the other qualifications that we find for the membership of the Council of State. I would add one further qualification, and that is, ex-Ministers, ex-Members of the Executive Council, ex-Judges of the High Court and ex-Vice-Chancellor of the Universities. This is for the Upper Chamber.

Item No. (vii):—

> "What requirements, if any, are to be made in in the matter of an Oath of Allegiance on assumption of a seat in either Chamber."

I would accept, My Lord, the statement on this point made by my learned friend, Sir Tej Bahadur Sapru, and also the statement made by my learned friend, Sir Muhammad Shafi.

Item No. (viii):—

> "What provision, if any, shall be made in each Chamber for nominated members, and for what purposes."

As regards that, I would accept the provision made in the Report, paragraph 34:—

> "That the Governor-General should be empowered to nominate a specified number of persons, not exceeding, say, 10, to each Chamber."

As regards the purposes for which they should be nominated, it difficult to specify them; but I should think that they would clude the experts for certain legislation and Crown representatives. would give them as full powers of membership as the other embers—the power of voting and the power of expression of pinion.

These are the submissions that I have to make on the various ub-heads.

Mr. Gavin Jones: My Lord Chancellor, I will confine my remarks to the questions you have put to this Committee under Head 2.

With regard to questions (i) and (ii), these are matters that entirely concern the Indian States, and I will not presume to offer them advice. All that we British Delegates are interested in is that the States should be adequately represented in the Federation—that they should be represented in a proportion that will be fair to British India; and as to the method of their appointment I think we must leave that entirely to the Indian States. I think that we British Delegates will make a mistake if we offer advice on these matters, which are entirely within the internal economy of the States, and that we should leave such matters to right themselves afterwards.

My reasons for saying this are, first, that we cannot generalise about the internal economy of the Indian States, because they are extremely varied. Secondly, I am not at all certain that some of the Indian States are not advancing politically on sounder lines than British India has been. Thirdly, and most important, we want a federation of all India, and we must do everything we can to obtain that federation. This Committee has been appointed for that purpose by the Conference; and all of us agree that the only solution of the problem of the future government of India is an all-India Federation. And may I say here that no responsibility can be transferred to any government that is not representative of all India and of all interests in India. The great advantage of this Federal Government is that the constituent states, both British India and Indian States, will be able to develop themselves on the lines most suited to their conditions; and, after the Federation is formed, we will not be able to interfere with the internal affairs of other States. Here we have got to imagine that we are representatives of states endeavouring to come together for the common purpose of dealing with subjects which are only of federal interest.

Regarding questions (iii) and (iv)—the method of appointment of British Indian representatives to the Upper and the Lower Houses, other than those representing special interests—if you will permit me, Sir, I will deal with (iii) and (iv) together. I am still personally of the opinion, as I was at this Committee in the last Conference, that the soundest representation really is the representation of governments; but the consensus of opinion is evidently that the method of appointment to the Upper House should be by indirect election from the Legislatures of the constituent states. Therefore

our community agree to that, on one condition which I will mention in a minute. As regards the Lower House, we are of opinion that the best method of appointing representatives to the Central Legislature is by indirect election; but it is evident that popular opinion desires that the representation should be direct. To this we agree, provided, as I have said, the following condition is fulfilled. We think that, if the Upper House is indirectly elected and the Lower House directly elected, it will not be truly representative of the federal governments; and it is most important that, if this form of election to the Upper and Lower Houses is adopted, it should be truly representative of the federating units, and that the two Houses should have equal power. The individual rights of the federating units must be adequately protected in the interests of all the states, including the Indian States and the future British Indian States. This can only be done, in our opinion, if the Upper House has the same control as the Lower House over all matters, including finance.

In regard, Sir, to question (v)—the representation of special interests—we are strongly of opinion that the special interests that are now represented in the Legislature should also be represented in the future Government in both Houses of the Legislature. These will include Commerce, Landholders, Labour, Depressed Classes, Europeans, Anglo-Indians and Indian Christians. As regards the representation of Europeans, we maintain that we should have the same proportion of representation as we now have in the Central Legislature.

Chairman: Would you kindly help me, Mr. Gavin Jones, as to the sort of method by which you think the Europeans ought to be elected or selected or nominated, whatever the word may be.

Mr. Gavin Jones: We suggest that there should be constituencies as there are at present, and that they should elect their own representatives.

I would like to touch on a point which Mr. A. R. Iyengar made, that he thought that Europeans would be elected in a general constituency. Now, we are quite sure that we would stand no chance, speaking generally, of being elected in general constituencies; and this is confirmed in the Report of the Indian Central Committee by Indians themselves on page 46 of the Report.

As regards the representation of Commerce, we are of opinion that both British and Indian Commerce should be represented by three or four members in each House. I mean three or four members for Indian Commerce and three or four members for European Commerce.

As regards question (vi)—the qualifications of the Upper House—we think that the present qualifications should be maintained, and that the age limit should not be reduced below 30.

Now, Sir, as regards question (vii), regarding the Oath of Allegiance, this is a very important matter. Sir Tej Bahadur Sapru has quoted to us the Irish Free State Oath. In that con-

nection His Highness of Bikaner and Sir Akbar Hydari remarked that their subjects could not take any Oath which in any way detracted from their allegiance to the Rulers of their States. Our position is in a way analogous to that of the subjects of Their Highnesses, we cannot possibly take any Oath which will conflict with our individual allegiance to the King-Emperor. We are proud of being subjects of His Majesty, and we take up the standpoint that the Oath of Allegiance should be the same as in all other Dominions except the Free State. The Irish Free State was formed under abnormal circumstances and really was a matter of compromise. We consider that the Irish Free State Oath is objectionable, because it implies loyalty to a Constitution above loyalty to the Crown, or to the Sovereign of the State to which the subject may belong. The position of the subjects of the Indian States is slightly different from our position, because they are independent States and their subjects owe allegiance primarily to their respective Rulers We would therefore suggest that the Oath should take the following form:—

> " I do swear that I shall be faithful to bear true Allegiance *to His Majesty King George V, King of Great Britain*, Ireland, and the British Dominions beyond the Seas. Emperor of India, His Heirs and Successors according to Law, and to—(and here insert the name and title of the Sovereign of whom the individual is the subject)—His Heirs and Successors according to Law. So help me God."

Now, Sir, I am perfectly sure that nearly everyone here will be satisfied with an Oath which holds goods in all the other Dominions except the Irish Free State. After all, the King-Emperor will be the Head of the Federal Constitution as much as he is the Head of other Dominions; and when you swear Allegiance to the King-Emperor, you will in fact be swearing Allegiance to the Constitution which has been appointed by the King-Emperor. We want Sir, to be quite clear on this point, so that there will be no confusion hereafter; and we plead with our British Indian fellow-subjects that they should adopt this form of Oath.

Regarding question (viii)—the provision of nominated members in each Chamber—at the last meeting of this Committee in the last Conference I pointed out that the ten members suggested in the Report were totally inadequate because of the enormous interests and obligations which the Crown has to bear. I would suggest, therefore, that the representation should not be reduced below at least ten; and, instead of fixing it at the number of ten—which is inconvenient because we do not exactly know yet how many members there are going to be in the Legislature—I would put it that the representation of the Crown should be 10 per cent. in the Upper House and 5 per cent. in the Lower House. We think this is inadequate; but, in deference to our other British Indian Delegates, who seem to fear an official bloc, we will not press for more. This bloc will not necessarily be an official bloc. The Governor-General will have it in his power to appoint whomever he thinks advisable;

and although it is not necessary that the members should be officials, certain officials representing Crown subjects will probably be appointed. Sir, that is all I have to say at present on these subjects.

Chairman: I have been asked to tell you as concisely as I can what is the view taken by His Highness of Dholpur upon these questions. I am not going to be very long; but I have had the advantage of speaking about the matter with Sir P. Pattani, who has told me roughly what the idea is; and I think I had better tell you so that you will know it. You will quite understand, however, that, in the first place, I am not at all expressing my own opinion, and, in the second place, I am only endeavouring to put what would have been put very much better, had he been present, by His Highness of Dholpur. He will be here, I hope, next Monday; but it is important you should know his views in order that, if you desire to make any remarks upon them, you should have the opportunity.

The position is this. His Highness says that, just as there are some subjects which may concern British India itself—Central subjects—so there may be, and probably are, some subjects which concern all the States centrally, as it were—not Federal subjects, but subjects which concern the States centrally just as some subjects concern British India centrally. He then asks whether it would not be well—just as British India can deal with its own Central subjects—so there should be some organisation which would deal with the Central subjects which concern the States; and he envisages that a very useful body for that purpose would be the Chamber of Princes—not the Chamber of Princes necessarily as it at present exists, but, to quote his exact words, "a Chamber of Princes substantially enlarged and constitutionalised as a confederated Indian India." That Chamber would deal with the class of subject, if there are any, which is Central as far as the States are concerned, just as there may be some subjects which are Central as far as British India is concerned. Those who think with His Highness—I do not know who they are: that does not concern me, since I am endeavouring only to put this view as clearly as I can—think that this "enlarged and constitutionalised" Chamber of Princes can also serve another purpose, and that purpose is this. It might be used as an electoral college for electing the members to represent the States, as I understand it, both in the Upper House and in the Lower House of the Federal Parliament. Sir Prabhashankar will correct me if I am wrong; I am doing the best I can under the circumstances.

What he says with regard to that is this—and this will concern Your Highnesses. He says that that electoral college will be able to elect, nominate, appoint, select—whatever word you like to use for the moment—the representatives of the States to the Federal Houses of Parliament. But it might well be that they would always have to elect—I am only giving you hypothetical figures—two or three members from Hyderabad and one or two, or two or

three, or three or four—whatever you like to put—from one or two of the other bigger States. They would not be quite free to elect whom they like; the bigger States would be entitled to have two or three—or whatever it may be—representatives. In that sort of way, he says, you will get the great majority of the States, and in particular all the smaller States, represented upon this electoral college; and in that sort of way they will get an indirect representation by being able to appoint their people to the Federal Houses of Parliament.

As a corollary of that he says that, if that is the proper thing to do—if that is the desirable thing to do—then the position may be regarded in this way. It will not be a Federation, we will say, of British India on the one side plus, on the other side, Hyderabad and Bikaner and Kashmir and so on— forgive me for not mentioning all the Indian States—*but it will be a Federation between* British India on the one side and, on the other side, a Confederation of States electing their members through the Chamber of Princes. He says that is a sort of compromise between autocratic representation—forgive me for using the word—of the Ruler of the State and popular election; it is a sort of popular election by the Rulers of many States and not an autocratic selection. Then he says, as a corollary to this—and this is an important thing as far as all of you are concerned—that, if that is so, ought not it to be 50/50? You know what that means!

I think, Sir Prabhashankar, I have put it more or less accurately. His Highness of Dholpur will be here on Monday, and then will be the time to ask him questions. But I thought it would be wise that I should tell you this at once so that, if you want to make any comments, you can do so.

Sir Tej Bahadur Sapru: I do not want to cross-examine you, My Lord, but I do want to suggest two questions, in order that I may get an answer to them at some stage or other either from Sir P. Pattani or from His Highness of Dholpur. My first question is this: When the authors of this scheme talk of Central subjects affecting all the Indian States, do they contemplate a Chamber of Princes to legislate for all the States in regard to those Central subjects? That is the first question. As part of that question I should like to ask: How do they reconcile their idea of sovereignty with this proposal, which will impose upon them the sovereignty of the Chamber of Princes? My next question is : Is it contended really by the authors of this idea that the Princes, who will constitute the members of the Chamber of Princes, will be the electors; and may we reasonably expect (using the word which was used by Your Lordship) that the autocratic Princes will be able to select democratic representatives for the Lower House?

Mr. Iyengar: Your Lordship used the words:

> "A chamber of Princes substantially enlarged and constitutionalised as a confederated Indian India."

Can we get any light to-day or later on the word "Constitutionalised"? Your Lordship also referred to popular election by the

Rulers. That is a matter upon which I would desire to have very much more light. What is popular election by the Rulers?

Sir Muhammad Shafi: Does the scheme contemplate that representatives of individual States will be elected by this Chamber of Princes collectively?

Dr. Shaja'at Ahmad Khan: I have no desire at this stage to make any comments upon the proposals which His Highness The Maharaja of Dholpur is going to raise. I think that it would be best if we did not decide finally on the important issues in Item (i) until we have heard the Maharaja of Dholpur. My first impression is that the scheme will not work, but I cannot go beyond that. I hope that, if the proposal is made, we will be allowed to express our views on some of the points mentioned by you, Lord Chancellor.

I come now to the question before us, Head 2. With regard to Head 2, Item (i), it is difficult for me at this stage to formulate or to express finally views with regard to the method of representation by groups of States; but, so far as (i) (*a*) is concerned, I am definite that it should be by election. I believe that the members of the future Federal Legislature should all be elected to the Lower Chamber, and I feel that the work of the Lower House will be very seriously affected if some of the members are nominated by the Princes. I admit the great work which the Princes have done for our country, and I take this opportunity of paying my tribute to His Highness The Maharaja of Bikaner and the Chancellor of the Chamber of Princes, for the great and unexampled policy which they adopted last year of agreeing to join the Federation; but I am not convinced that our Federal Legislature will really work satisfactorily if we have in either House a body consisting of nominated members from the States on one side, and elected members on the other. It will have a very serious effect upon the working of our Parliamentary machinery. At the present time, nominated members are appointed for various considerations. There are, of course, good members, and there are incompetent members; but I may say that generally the members nominated by the Government have done exceedingly good work. Some of them have been men of great eminence, of merit, of service, and of experience. If members are nominated in the future, not by the Government, but by the Princes, in the first place there is no guarantee that the standard which has been hitherto maintained will be kept up. In the second place, it will have a very serious effect upon the development of party government in future India, because there is a unity of policy and a uniformity of programme so far as British India is concerned; but if we have, say, one-fourth of members of our future Legislature coming from all the four corners of India (some from Kashmir, and others from Manipur), it will have a very serious effect upon our party system, because the policy that they would pursue would be dictated to them by the Princes from headquarters, and the policy may, therefore, be so thoroughly inconsistent as to be entirely destructive. Consequently, I think that it will have a very serious effect upon the development of party government in the Lower Chamber. There will be a lack of confidence in the

party system as a whole, and ultimately there will be, I fear, Ministerial instability. You will never be sure upon any point *what policy the members from the States are going to adopt.*

Then, My Lord, it is said by the Indian States that the question of election or nomination is entirely one for the States themselves. I made it perfectly clear in my last speech that, so far as the internal autonomy of the Princes is concerned, I am and have been *a great champion of the policy of non-interference in their domestic* affairs. I regard the sovereignty of the Indian States, as regulated *by the Treaties, as inviolate; but my contention is that, when the re*presentatives of these States come into either the Lower Chamber or the Upper Chamber, it will not then be a concern merely of these States. When they come into the Legislature, our Legislature is profoundly affected by the entry of a very large bloc into the Lower House. Its entire outlook, policy and procedure are changed by the existence of heterogeneous individuals. Therefore, it is not merely the concern of these States, but it is also the concern of the members of the Legislature from British India.

For these reasons, Lord Chancellor, I think that, so far as this point is concerned, the principle of election for the appointment of representatives from the States will have to be maintained. I leave it to the States to decide whether election should be direct or indirect.

With regard to the franchise, I am perfectly willing to leave the details of the franchise to be arranged by each State as it likes. This is done in all federal constitutions, and the States may suggest any franchise they may deem necessary, suitable or convenient for their purpose.

With *regard to the* Upper *House*, I *think the Governments* of the States should have the right to nominate representatives. I feel that this method is likely to produce a more efficient House even than the House we have got now. The Council of State existing at the present time has not, I am sorry to say, realised our expectations. I look forward to an Upper Chamber which will perform the functions which used to be performed so efficiently and thoroughly by the Bundesrat of the old German Empire; and, from this point of view, I can quite imagine the representatives from the various States in the Upper Chamber doing the work in that Chamber with a thoroughness, a skill and an efficiency that *may make it a very efficient and workable body.*

With regard to the question of the selection of representatives of groups of States, on this point I have nothing to say. I think that is a matter which must be left entirely to the States themselves. The States will have to be grouped, and it will be for the States themselves to suggest the methods and the principles on which they should be grouped and the number of votes which should be allotted *to each* State or group of States.

I come then to (iii). With regard to (iii), I am of the opinion that the British Indian representatives in the Upper Chamber should be indirectly elected by the Provincial Legislatures. I will

not adduce arguments in favour of this proposal, because so many arguments were adduced yesterday; but I will only say this, that about three years ago the members of the Simon Commission in the United Provinces, of which I happened to be a member, considered this question in all its aspects, and they came to the conclusion that, with a view to the co-ordination of the work of the Provinces with that of the Centre, it was necessary that there should be election by the Provincial Legislatures to the Central Legislature. I should like to add, however, that my support of indirect election is subject to two conditions—the conditions mentioned by the Government of India in paragraph 145 of their Despatch. With your permission I will read out a passage from paragraph 145:

> "The present method of returning members of the Council of State by direct election has been successful in composing the upper house on suitable lines. Our own preference would be for maintaining the present system; but we recognize that, if the Assembly were to continue to be constituted on the basis of direct election, there might be some advantage in taking occasion through the Council of State of familiarizing men's minds with the federal idea and the system of indirect election proposed by the Commission. We would, however, make our acceptance of a change in the existing method of election conditional upon two objects being attained. We should wish to be satisfied that the change involved no prejudice to the rights of minorities. Our second proviso would be that the change commended itself to public opinion. Subject to these two considerations, we should be prepared to accept the proposals of the Statutory Commission."

While I am on this subject I should just like to point out one or two difficulties which might be experienced by the small communities, and which might necessitate a slight modification of the proposal I have just supported. In the case of the Indian Christians, for instance, who are scattered throughout the length and breadth of India—though the majority of them are concentrated in the Madras Presidency—it might be very difficult to get any Indian Christians returned indirectly by a Provincial Legislature; and in these cases some provision should be made whereby their representation would be secured. The normal procedure which has been adopted has been that existing organisations of the various communities concerned have proposed a list of three or four names for membership of the Legislature; the names have been submitted to the Governor, and he has selected one of them. I do not know if the community would like to maintain the present system: I only wish to draw your attention to the necessity of making some provision for the representation of very small communities who really may not be able to get in through the single transferable vote.

I now come to (iv). With regard to (iv), I am of the opinion that the members of the Lower Chamber of the Federal Assembly

should be directly elected by territorial constituencies. I believe that this is the most practical, and, I should say, the most popular, system. If we suggest any other plan at this stage it will be unacceptable to the people of India. Direct election is, to my mind, the best method. I should, however, like to draw your attention to the proposal which was made in the Franchise sub-Committee of the Round Table Conference, and which has been referred to the Expert Franchise Committee for their consideration. May I just read out this paragraph, which is paragraph 4 on page 57? This is what they say on that page:—

> "We recommend that, in addition to providing for this increase, the Commission should consider the introduction of a scheme by which all adults not entitled to a direct vote would be grouped together in primary groups of about 20 or in some other suitable manner, for the election of one representative member from each group, who would be entitled to vote in the Provincial elections either in the same constituencies as the directly qualified voters or in separate constituencies to be formed for them."

I do not commit myself to the proposal, but I think it is well worthy of consideration by the Expert Franchise Committee. This proposal was made by Lord Zetland in the Franchise sub-Committee of the Conference. I did not support it then, because I was not sure it would work. I think, however, that in some cases—in the case of the Assembly, for instance—it might be convenient if enquiries were made as to whether it is practicable and whether we can apply it to the complex conditions of India

Here again, so far as these very small minorities are concerned, I think it might be very difficult to get them directly elected by territorial constituencies. In my own Province there are only about three lakhs of Indian Christians; in the Punjab there are about three lakhs; only in Madras do you find a large number. It would be quite impossible for any person belonging to that community, who wished to stand for the Assembly in his constituency, to organise an election in three or four Provinces. The expense would be prohibitive, and the effort to succeed would be hampered by lack of party organisation and by other reasons.

I would certainly have liked the constituencies for the Assembly to be much smaller. I have had experience of two elections for the local council, and I have also been instrumental in helping in organising a few elections in various other districts; and I can say that it is very difficult indeed, with the constituencies as they exist now, for a member to keep in touch with his constituents. There have been and there are a very large number of members who do manage to keep in touch, and who periodically visit their constituents. I know members of my own party who have done that in the past—who visit the villages and talk to the villagers, and who manage to keep completely in touch with their constituents. But if a constituency is spread over four Districts, as there are cases, or

hensive and very important Bill passed into law in 1921, the Oudh Tenancy Act. Then five years afterwards, in 1926, the local Council passed another far-reaching Act dealing with the relations between landlord and tenant. During the last two years the position in Oudh has become very serious indeed, extremely serious. I do not wish to say anything here about the necessity for the maintenance of good relations between the two classes; nor do I wish to go into details of various measures. All I would like to impress upon the members of this honourable body is that, in my humble opinion, some provision should be made for the adequate representation of the landlords in the Federal Legislature.

Mr. Joshi: And tenants also.

Dr. Shafa'at Ahmad Khan: I will come to that

Chairman: "Landlords" you said

Dr. Shafa'at Ahmad Khan: Landlords, both in the Lower and in the Upper House. I feel that the landlords, if they are not protected, will not be able to safeguard their interests. In 1919, 1921 and 1922, when the new Governments in Europe came into power, the first thing they did was to start almost revolutionary agrarian measures for the purpose of expropriating landlords of foreign extraction. I think in Poland, Latvia, Esthonia and Czechoslovakia, agrarian measures, which were almost revolutionary measures, were passed with a view to taking the property of one class and giving it to another class. I do not contemplate that this will be done in India. The relations between landlords and tenants in my Province are excellent

Chairman: Are you speaking of the United Provinces?

Dr. Shafa'at Ahmad Khan: I am speaking of Agra, not Oudh We consist of two provinces Agra and Oudh In the other part of my Province, Oudh, the relations are not so good and I can quite imagine there might be a possibility of a serious trouble in future. In order, therefore, to provide against the possibility of their being completely ignored, I do hope that some representation will be given to the landlords in both Houses.

Sir Tej Bahadur Sapru: May I point out that we are considering here the question of the Federal Legislature and not the Provincial.

Dr. Shafa'at Ahmad Khan: I am speaking of the Central Legislature and not the Provincial.

Sir Tej Bahadur Sapru: The law relating to the relations between landlords and tenants has nothing to do with the Central Legislature; it is a Provincial matter.

Dr. Shafa'at Ahmad Khan: I should like to remind Sir Tej Bahadur Sapru that I mentioned I was only giving an example and illustrating the necessity for the representation of a class which I think deserves the support of every impartial person.

Then, Sir, as regards the other interests, I am in favour of the maintenance of the privileges enjoyed by the various interests at the present time. The Europeans must continue to possess and enjoy the rights which they have at present. They have got a certain quantum of representation; I should not like to reduce that quantum. As regards Labour, I think Labour ought to be represented also; and generally I agree with what Sir Muhammad Shafi and Sir Tej Bahadur Sapru have said about the representation of special interests. I should like these interests to be represented in both the Houses—the Upper Chamber as well as the Lower Chamber.

As regards (vi), I think the rules which are now observed with regard to the qualifications for membership of the Upper House may, with certain modifications, be maintained. There ought not to be any radical change in those rules. For the Council of State we have got certain rules framed by the Central Government.

Chairman: Under the Act, yes.

Dr. Shafa'at Ahmad Khan: Those rules should, in my opinion, be maintained with slight modifications. We must impose the condition of residence; a person must be resident in the Province which he is going to represent. Besides this, he must possess other qualifications, either property or academic qualifications, or the qualification obtained by holding certain offices. At present, if a person is vice-president of a local body or a Fellow of a University he is an elector for the Council of State, and besides that there are other offices enumerated in the rules.

With regard to disqualification, I think the sections of the two constitutions cited by Sir Sultan Ahmed may be adopted with the necessary modifications. So far as the question of moral turpitude, which was referred to yesterday, is concerned, I think any person who is convicted of a crime involving moral turpitude should not be eligible for the membership of the Upper House. This question cropped up in our local Council for several years, and there were various resolutions on the subject. I think the sense of the members there was in the direction I have indicated.

Mr. Iyengar: That is not the case so far as the Assembly is concerned.

Dr. Shafa'at Ahmad Khan: I am not speaking of the Assembly—I have never been there. I am speaking of the Provincial Legislature; and there there seemed to be agreement that persons convicted of crime involving moral turpitude should not be eligible.

Mr. Iyengar: The Assembly, Lord Chancellor, passed by a very large majority a resolution against imposing any political disqualifications either on the ground of political offences or on that of moral turpitude.

Dr. Shafa'at Ahmad Khan: As regards (vii), I feel that this is a question which should be settled in consultation with the States. I do not wish to say anything on this; but what I feel

is that the question of allegiance to our King-Emperor is quite consistent with allegiance to the Ruler of the Indian State. There is absolutely no conflict of loyalty; and I may add that, so far as the States are concerned, every State which comes into the Federation will retain its sovereignty, and we shall have practically the same principle applied as is applied in other constitutions. Let me quote here one brief sentence from Lord Bryce's "American Commonwealth." This is what he says:—

> "A State commands the allegiance of its citizens and may punish them for treason against it. The authority of a State is an inherent and not a delegated authority."

The Indian States, therefore, retain all their powers with the exception of those powers which are specifically given to the Federal Government; and the question of any conflict does not therefore arise.

With regard to No. (viii), I agree with the recommendation of the Federal Structure sub-Committee that we may have ten members, and not more than ten, in both the Upper and the Lower Houses; but, in some cases, I think that provision should be made for the nomination of experts to both the Houses if and when necessity arises. A provision like this is to be found in other constitutions, especially new constitutions; and I think that it would be very useful if, besides these ten, we have one or two men (I hope not more than two or three) in the Lower Chamber as well as in the Upper Chamber. This has been done very successfully in the Provincial Legislatures. When questions of a very serious, complex, or technical nature have arisen in my own Province, we have had experts nominated. I think that, without that help, we would not have been able to pass a really satisfactory and suitable law both as regards tenants and Universities.

Lord Peel: I do not want to detain the Committee very long. I do not intend at this moment to deal with all these very varied subjects that have been so comprehensively discussed yesterday and to-day, although I have listened with very great interest to the speches that we have just heard from Dr. Shafa'at Ahmad Khan, Mr. Gavin Jones, and Sir Sultan Ahmed. If I do not discuss the points that they have raised, they will understand that it is merely because, at the present moment, I wish to confine myself to one important point. All these other matters that they have raised are in course of discussion, and are perhaps not ripe for settlement. I wish only to say a few words upon this question of direct or indirect election, because I hope that I shall be able to make a contribution to the shaping of opinion upon this subject before final decisions are taken, and because, if I may say so, I think that the case for indirect election of the Lower House of the Assembly has rather gone by default.

I am quite conscious that I have a great weight of opinion against me. I have my colleagues Sir Tej Bahadur Sapru and

Sir Muhammad Shafi. I notice with great interest that these two distinguished leaders of the two great communities are apparently, upon this subject, entirely united. I very much appreciate that sense of unity. I have also Mr. Iyengar against me; and I think that it was Sir Sultan Ahmed who, after regretfully considering the matter, came to the conclusion that, for the Lower House of the Assembly, direct election is necessary. I think that that conclusion was also reached by Mr. Gavin Jones.

I am aware that on two broad principles these gentlemen have supported direct election. The first is that there is no precedent in federal systems for anything but direct election to the Lower Chamber. I am not very much impressed, if I may say so, by the mere question of precedent upon this subject—although, of course, I naturally bow to it in many respects—because it is generally admitted that this whole question of a federal scheme for India has to face problems which are entirely unique. Therefore, is it really wise to draw precedents from other constitutions, when the whole matter is admitted to be entirely different? Secondly, if I may say so, I have never been one of those who are very anxious that, in shaping its constitution, India should necessarily follow Western precedents. Of course there is a great deal to be said for Western precedents, but I think that in many ways India should not be in the least afraid of striking out a new and original path if it is necessary to do so.

The second broad statement that has been made is that public opinion has been rather concentrated on the point of direct election for the Assembly. Of course, like other people, I have to accept the weight and influence of public opinion. I do not say that I necessarily always think that it is right: but the public opinion that has been referred to is really—is it not?—very largely the public opinion that has been directed to the old question of a British Indian representation and a British Indian assembly. Am I not right in saying that it is a little doubtful whether this force of public opinion has really weighed up and seized all the differences that are made in the shaping of the new constitution by the fact that we are moving on to this federal basis rather than on to the old unitary system? I submit—and this is my first point—that public opinion is very often behind the times. The leaders of public opinion, after all, can do a good deal to shape it, and to show that it is not necessarily consistent with the new state of affairs that has arisen. Moreover, I do not think that we are exempted, simply by the mere statement of public opinion running strongly in one direction, from examining the grounds and the reasons upon which it is founded. We are to some extent a collection of experts. Of course, I do not call myself an expert; but there are many experts sitting round this table who are very capable of judging whether this new system fits into the general consideration of a federal system and a federal scheme, which in itself is a very complicated and difficult matter. Therefore, I should like to state one or two reasons which seem to me to favour

the indirect system, arising as it were, out of the very body and nature of the constitution itself.

First of all, I think that one wants to get entirely out of one's head, and to free one's mind from, all the presuppositions, prejudices, and tendencies, which naturally hang about the mind when one is thinking of a unitary constitution. Let us look at this matter solely from the point of view of the federal constitution and the necessary implications that follow from that. I would first of all say that clearly, in a federal constitution, you want to have (and I am looking at it purely from the point of view of the good working of a constitution) harmony between the two Chambers of the central body. You must also get such harmony as you can between the federal and the local Governments and Councils. That, after all, is a condition of the good working of the constitution. It is almost a commonplace—but one must base cases on commonplaces because you get down to facts—that this constitution is arising in a different form from that of any other federation In previous cases you have had strongly constituted units, in some cases sovereign units, which have combined together in order to create a central constitution, and have given up some of the powers that have been long enjoyed for that purpose for the general good. Of course we all know that that is totally the reverse of what has happened and what is happening in India at the present moment. We all know that there has been this unitary Government, and that the authority that has been enjoyed by the Provinces has been a delegated authority and not an original authority, and that they have been allowed—to put it shortly—to do what the Central Government permitted them to do. They have had no, or very little, original force of their own. Therefore, the whole tradition of people's minds has been, from the political point of view, that they have regarded the Central Government as their master—I will not say with some hostility, but with that critical view with which we often now-a-days regard the exercise of authority over us. They have not regarded the central authority as a being whom they have created themselves, who is their own child, as it were, and whom they ought generally to cherish.

Now, that being so, it seems to me that you ought to secure, if possible, the closest connection between the authoritative expression of authority in the Provinces—that is to say, the Governments and Councils—and these central bodies. And I suggest, therefore, that for that purpose, and to carry out that purpose, the Councils should select their representatives to the Central Assembly—I am assuming, of course, by a method of voting which gives the proper distribution of authority and numbers to the great communities, and so on.

The Provincial Government, therefore—and I do not think it will in the same way regard it if you have direct election—should regard the central authority as its own creation and as really part of itself We know that, under this constitution, and certainly

in a great many quarters, it is pressed that great powers should be given to the Provinces, and that the authority of the Central Government should be limited to certain specific classes of things, and that they should have authority over them and no more. Now, it is quite obvious that, if you are going to create these powerful and very big local governments—almost countries, with forty or fifty millions of people in them—there is a danger of a centrifugal tendency on the part of these great masses to fly away from the centre unless they are firmly and vigorously anchored to that centre. You must really, therefore, do everything you can to maintain a close tie between the Centre and the Provinces in order to get the proper working of the constitution, and you want to lessen that tendency to break away. In many quarters, of course, it is thought that there should not be too much control or authority exercised by the Central Government over the Provinces: and, if that is so, you should make a more special effort, I submit, in your constitution, to link the Provinces, through their authoritative Governments, and the Central Government together.

Now, you have another very great advantage, I submit again, by this system of indirect election. I am referring for the moment to all these separate electorates that you have for the different great communities. It is admitted that they are rather contrary to what is called democratic theory. It is admitted also that they must exist—anyhow for the present, in order to meet the requirements of the great communities. But I do not think you want to multiply them more than you must necessarily do: and if you can get rid of the necessity of setting up these fresh systems of electorates of separate communities, and so on, in all the Provinces, for the purpose of electing to the Central Assembly, well, I think you will have done something at least to soften, in that respect, the antagonisms between the great communities. And, moreover, there is this consideration. It is certainly the experience of the Western world that, the more you multiply the number of elections, the less interest is taken in those elections; and it is necessary to concentrate, if you can, the interest of people on the smallest possible number of elections. In that way you do good, as it were, to the electoral principle itself.

Now may I state the bearing of what I have said on one or two questions, such as that of finance. We have not discussed finance very much so far, although, of course, that will be one of the governing matters with which we shall have to deal. But it is quite clear that, under the conditions in India, and with the financial system we have got there, and under conditions of federation, there must be the very closest co-operation in matters of finance between the Provinces and the Centre. I am taking both of the matter of the loans question and also of the question of taxes—because however much you choose to separate the heads of taxation, and assign some to the Province and some to the Centre there must be some mutual give-and-take as regards the yield of these taxes, and in many cases, of course, there may be grants to

and from one another as between the Provinces and the Centre. Well, to get harmony in that respect it is clearly necessary again to have the closest relation between the two; and if these gentlemen that you send up are selected by the Provincial bodies themselves, fully aware of the incidence of taxation, you are much more likely, it seems to me, to get harmony, than if you get elected representatives coming straight away from these different constituencies. Moreover, if you are going to have two elected bodies, the elected Provincial Government and the elected Assembly, which must be brought into relation with each other, you are liable to every kind of clashing. Now, it is a commonplace again that elected bodies always differ from one another; it is the law of their being. And one remembers so well, that, in all the discussions in this country as regards putting an electoral element into the House of Lords or having our Second Chamber on an elected basis, we are always told by those who do not like to reform us that there will certainly be clashes between these two assemblies because they are both elected; and that will be the case in India as well. That law applies to the East just as well as to the West. Therefore, in the interests of a general harmony between the two authorities, I submit that you should get away, as it were, if you can, from direct election.

I have argued this, of course, from the point of view of general theory and of the bearing it may have on the federal scheme; and I will only, if I may, notice two objections to that. I think they are stated in the Government of India's Despatch—because the Government of India's Despatch has discussed this question and has not come down, I think, with very great certainty on one side or the other, although it does favour to some extent the direct election system. They suggest, for instance, that by this system of the selection of representatives you will have your Assembly a little too much provincialised—that the men will come there less with what I call the all-India outlook and rather with the provincial outlook. Well, I think there would be some force in that if the Provinces were the little things that they are in some constitutions; but with these great bodies of men, representing populations of thirty, forty and fifty millions of people, I do not think what is called the provincial outlook is likely to be so narrow. Indeed, I am inclined to think that, if a man is a good citizen of Bengal or the United Provinces, he is likely to be, for that purpose, a good Indian. I do not see that there is or can be drawn that distinction between the two things.

The other objection, I think, which they raise—which seems to me a very minor objection—is that perhaps the electorate might not want at once to select a man for their Provincial Council and a man who should also be a member of an electoral college for electing the Central Assembly. Well, I should have thought that, if the people of any district had confidence that a man would represent them in the very difficult and complicated matter of dealing with the affairs that are entrusted to the Pro-

vinces, they would also be quite ready to entrust him with the lesser matter of electing a representative on the Central Assembly.

I pass by, therefore, those two objections as not being of really great importance or relevance; and therefore, if there are great arguments, as I think there are, from the constitutional, federal point of view, for substituting indirect for direct election—and I am not pedantically insisting at the moment upon any particular form of indirect election, because all the different systems are open —there are very great objections to the direct system. I have listened with great respect to what these gentlemen have said about it; but, nevertheless, the consideration of the immense size of these constituencies, and the enormous labour of getting into touch with them, has not been removed from my mind. I do not wish to go into details because gentlemen here know them so well—the great size of these constituencies, especially when that difficulty is enhanced by the necessity of having different electorates for Muslims and Hindus, and the large areas they have got to go over. I was much struck by the remarks of Mr. Iyengar (I think it was), who did not seem to be at all impressed by the difficulties of managing large constituencies. He said one or two things which I did not quite understand in my ignorance. He said you have official organisations which can be said to conduct the elections in a manner which is perhaps not so usual or so easy in a country like England. I do not quite understand that.

Mr. Iyengar: May I hear the passage again?

Lord Peel: It is page 36 of the report of yesterday's proceedings. I do not wish to detain you at the moment; perhaps you would tell us afterwards. I do not quite know what it means. You say that there is no doubt a great expense and trouble, but, nevertheless, the electioneering campaign can be conducted successfully, and there can therefore be no real difficulty with regard to the size of the electorates. Mr. Iyengar no doubt will explain that point about the organisation; but what I submit is this, that that is not so much the main point—as to whether in the stress of an election, with great expense and great trouble and great exhaustion, you are able to get into touch with the whole constituency. What I submit is, that in order to have real representation you must keep in touch with the constituency while you are representing it. Mr. Iyengar has not really dealt with the point that, though you may have been elected by your constituency in this way, you are perhaps never able to see it again or visit the whole of it because of its vast size; and, therefore, as the months and the years go by, there cannot be that close connection between the representative and the constituency which is required. Indeed, the Government of India deal with the same point, and they say that the Indian electorate is held together by agrarian, commercial, professional and caste relations, and it is through these relations that a candidate approaches the electorate. That seems rather to suggest that the representative will deal not with individuals

at all, as we should imagine, but with the heads of great organisations. If that is so, that seems to amount to my point. It seems to come to a sort of secondary system or indirect system of election itself, because the representative approaches the heads of these organisations—like, for instance, the trade union combinations in this country—and does not deal so directly with the electorate. But let me pass by that point for the moment.

After all, the matter will only get worse, because, as the franchise develops, you will have more people in these great constituencies, and the difficulty of being in touch with your electorates will be even greater. Moreover, Mr. Iyengar has admitted the great expense; and surely, in these days when we hear so much of the poverty of the Indian villagers, and of the difficulty India has, I will not say in meeting her obligatinos but, in doing all that should be necessary to do for the development of the country, it is rather unwise—is it not?—to saddle India unnecessarily (if it is unnecessary) with a great expense of elections which might be avoided by the other system. So that, on practical grounds, it seems to me there are also very great objections to the system of direct election.

Now, I have not dwelt solely on these practical grounds. I have fully admitted that there is in this Committee a great deal of opinion against me; but I do urge that it is not quite enough merely to accept a general feeling of public opinion in favour of direct election, which really may be based upon the history of the last ten years and the experience of the Assembly. I would, therefore, strongly urge my colleagues to consider this matter very carefully and fully, not from the unitary point of view, but from the point of view of how far this system, direct or indirect, will further or prevent, will assist or do harm to, that close union between the different elements in the Federation, the Provinces and the Centre, upon which alone the full and safe working of this great constitutional effort can be based.

Mr. Wedgwood Benn: In a matter of this kind, in which no direct British interest is involved, would Lord Peel say that, in the ultimate decision, Indian opinion, if it appeared to be unanimous, should prevail?

Lord Peel: Well, I think Mr. Benn heard. I stated quite frankly and very fully my feeling that I had a great deal of opinion against me. All I wanted to say at this stage was this: I wanted to make a possible contribution to the discussion in order that my view might be weighed up with other views in any final decision that was arrived at.

Sir Muhammad Shafi: If the Provincial Legislative Councils in the Provinces were to be given this right of electing representatives for the Provinces both for the Upper House as well as for the Lower House in the Central Legislature, does Lord Peel not realise that one result would follow—that the majority in each Province, consisting of say 70 or 60 individuals, would have the

Delegates; and the first feeling of oppression that has been coming upon me is that we are not the chosen ones of the nation which we should be representing, but we are the chosen ones of the Government. I see, as I study the list and as I know the different parties and groups in India from experience, some very noticeable gaps also; and so I am oppressed with a sense of unreality in connection with our composition. My second reason for feeling a sense of unreality is that these proceedings seem to me to be interminable and to be leading us practically nowhere. If we go on at this rate I do not know that we shall proceed beyond having discussed the various points raised before this Committee threadbare.

I would therefore, first of all, Lord Chancellor, tender my deepest sympathies to you for the very great patience—and, may I add, the unfailing, courtesy—with which you are handling us; and I really congratulate you upon the great pains that you are taking over the proceedings of this Committee. I hope that, at the end of your task and of our task, it will be possible for me to tender my congratulations on having enabled us, or even compelled us, to show some tangible result.

May I here lodge a gentle, humble complaint against His Majesty's advisers? Having brought us together from over the seas, and knowing, as I take it they do know, that we are all of us without exception busy people, as they themselves are, and that we have left our respective posts of duty—having brought us together, is it not possible for them to give us a lead? Can I not, through you, appeal to them to let us know their mind? I should be delighted—and I feel that that would be the proper procedure, if I may venture to say so in your presence—if they would bring forward concrete proposals for taking our opinion. If some such thing was done I have no doubt that we should be able to come to some conclusions, good or bad, satisfactory or unsatisfactory; but if we simply resolve ourselves into a debating society, each member of which gives an eloquent discourse upon the points severally raised, I do not think that we shall be serving or advancing the purpose for which we have been brought together. It seems to me that it might be profitable, if it is open for you, to appoint a sub-Committee to give you some points for conclusion so that our proceedings may be terminated in fair time.

I have simply ventured to throw out these suggestions for your [illegible] and for the consideration of the members. Perhaps [illegible] bring them to the notice of His Majesty's advisers [illegible]. I do want them to guide us and to give [illegible] their own cards on the table. I want them [illegible] supposing that we appointed them as [illegible] they would be good enough to seek [illegible] opinion.

courageously in favour of federation, claimed also to be of the same blood with us—claimed to be our own kith and kin. How could they do otherwise? There is no difference between them and us except that we are common people and they are—God has made them—noblemen, Princes. I wish them well; I wish them all prosperity; and I also pray that their prosperity and their welfare may be utilised for the advancement of their own dear people, their own subjects Beyond this I will not go; I cannot go. I can only make an appeal to them. It is open to them, as we know, either to come into the Federation or not to come into it. It is up to us to make it easy for them to come into the Federation. It is up to them to make it easy for us to welcome them with open arms. Without that spirit of give-and-take, I know that we shall not be able to come to any definite scheme of federation; or, if we do, we shall ultimately quarrel and break up. Therefore, I would rather that we did not embark upon any federal scheme, than that we should do so without our full hearts in the thing. If we do so, we should do so whole-heartedly.

Then, with reference to the second head, I see that the second head has really been considered in connection with disqualifications—whether there should be any disqualifications or not Although I claim to be a full-fledged democrat, I have no hesitation in saying that it is entirely consistent with the rights of the voter to have some disqualifications attaching to candidature as also some disqualifications which would unseat a member. What they should be I do not wish to go into at the present moment; I simply say that I would endorse whole-heartedly the idea and the principle of disqualification. The words "moral turpitude" do not frighten me, on the contrary I think it is a good expression. Of course, any words that we may choose with the greatest deliberation will still cause difficulties; but what are judges for if they are not there to surmount them? In case of difficulty, judges will come to our assistance and will say what comes under the term "moral turpitude" and what does not; and if, perchance, a person like myself, offering civil resistance, was considered guilty of "moral turpitude," I should not mind. It may be that some people may have to suffer hardship, but on that account I am not disposed to say that there shall be no disqualifications whatsoever, and that, if there were any, it would be an encroachment upon the right of the voter If we are to have some test or some age limit, I think we should have some character limit as well

Then the third point is as to indirect and direct election. I wish Lord Peel were here to find me in substantial agreement with him so far as the principle of indirect election is concerned. I do not know—I am talking simply as a layman—but the words "indirect election" do not frighten me. I do not know if they have any technical meaning; if they have, I am wholly unaware of it. I am presently going to say what I mean. Whether it is called "direct election" or "indirect election," I would certainly go round and plead for it, and probably get a large body of public

I come to sub-head (v)—representation by special constituencies f special interests. I here speak for the Congress. The Congress has reconciled itself to special treatment of the Hindu-Muslim-Sikh tangle. There are sound historical reasons for it but the Congress will not extend that doctrine in any shape or form. I listened to the list of special interests. So far as the Untouchables are concerned, I have not yet quite grasped what Dr. Ambedkar has to say; but of course the Congress will share the honour with Dr. Ambedkar of representing the interests of the Untouchables. They are as dear to the Congress as the interests of any other body or of any other individual throughout the length and breadth of India. Therefore I would most strongly resist any further special representation. Under adult suffrage, certainly, labour units and so on, do not require any special representation; landlords most decidedly not, and I will give you my reason. There is no desire on the part of the Congress, and there is no desire on the part of these dump paupers, to dispossess landlords of their possessions; but they would have landlords to act as trustees for their tenants. I think that it should be a matter of pride for the landlords to feel that their ryots, these millions of villagers, would prefer them as their candidates and as their representatives than others coming from other parts or someone from among themselves. Therefore what will happen is that the landlords will have to make common cause with the ryots; and what can be nobler, what can be better, than they should do so? But, if the landlords insisted on special treatment and special representation in either Chamber, if there are two Chambers, or in the one popular Chamber, I am afraid that they would be really throwing the apple of discord into our midst; and I am hoping that no such claim will be put forward on behalf of the landlords or any such interest.

Then I come to my friends the Europeans, whom naturally Mr. Gavin Jones claims to represent. But I would suggest to him humbly that hitherto they have been the privileged class—they have received the protection that this foreign Government could give, and they have received it liberally. If they would now make common cause with the masses of India they would not be afraid, as Mr. Gavin Jones said he was afraid. He read from some document: I have not read it. It may be that some Indians also may say, "Oh, yes, if Europeans, Englishmen, want to be elected by us we are not going to elect them;" but I would undertake to take Mr. Gavin Jones throughout the length and breadth of India and show to him that he will be preferred to an Indian if he will make common cause with us. Take Charlie Andrews. I assure you that he will be elected a delegate in any constituency in India without the slightest difficulty. Ask him whether he has not been received throughout the length and breadth of India with open arms. I could multiply those instances. I have appealed to the Europeans to try once in a while to live on the good will of the people, and not seek to have their interests specially safeguarded or protected. If I might venture a suggestion, safeguards would be

the wrong way to go about the business. Let them live in India as one of us—that is how I would want them to live, and how I would beseech them to live. In any case, I do feel that, in any scheme that the Congress can be party to, there is no room for the protection of special interests. The special interests are automatically protected when you have got adult suffrage.

So far as the Christians are concerned, if I may cite the testimony of one who is no longer with us, I know that he said: "We want no special protection." And I have letters from Christian organisations saying that they want no special protection, that the special protection that they would get would be by right of humble service.

Then, are any special qualifications to be laid down for eligibility for membership of the Upper House? As you know my opinion about the Upper House, I do not need to give any opinion about that.

Now I come to a very delicate point—that is, the Oath of Allegiance. I would not be able to give any opinion just now, because I want to know what the status is to be. If it is to be complete freedom, if it is to be complete independence for India, the Oath of Allegiance naturally will be of one character. If it is to be a subject India, then I have no place there. Therefore it is not possible for me to-day to give any opinion upon the question of the Oath of Allegiance.

Then the last question: what provision, if any, shall be made in each Chamber for nominated members? Well, in the scheme that the Congress men have adumbrated there is no room for nominated members. I can understand experts coming, or men whose advice might be sought. They would give their advice and they would retire. I cannot see the slightest justification for clothing them with votes. Votes are given only by popular representatives if we want to have a democratic institution undiluted. Therefore I cannot possibly endorse a scheme where there are nominated members.

But that brings me back to sub-head (v). We have provision in the Congress regarding special cases. We want women to be elected, we want Europeans to be elected, we certainly want Untouchables to be elected, we want Christians to be elected; and I know well enough that these are very large minorities. Now, supposing that the constituencies so misbehave themselves as not to elect women or Europeans or Untouchables or, say, landlords, and they do not do so for no reasonable justification whatsoever, I would have a clause in the constitution which would enable this elected Legislature to elect those who should have been elected, but have not been elected. Perhaps I have not been able to express my meaning clearly, so I will give you an illustration. We have in one provincial Congress council exactly a rule of this character. We have thrown the burden upon the constituencies of electing so many women, so many Mussulmans and so many Untouchables to

the council; and, if they fail to do so, the election is then conducted by this elected body. They elect those who have been unjustly left out by the electorate. I would welcome some such saving clause in order that constituencies may not misbehave themselves; but, in the first instance, I would trust the constituencies to elect all classes of people and not become clannish or be caste-ridden. The Congress mentality, I may assure you, is wholly and absolutely against caste and against the doctrine of superiority and inferiority. Congress is cultivating a spirit of absolute equality.

I am sorry for having taken so much of your time, but I am thankful to you for having given me this indulgence, Lord Sankey.

(*Lord Sankey left the Chair, which was taken by Lord Lothian.*)

Sir Sultan Ahmed: I have a question I want to put to Mr. Gandhi, if you will permit me to do so. He suggested that, if the requisite number of people for any particular community were not elected, then he would have the power of election given to some other body.

Mr. Gandhi: No, it is those people who are elected who will elect.

Mr. Iyengar: Co-option.

Mr. Gandhi: Call it co-option. As a layman, you would not expect me to use accurate language, please.

Sir Sultan Ahmed: But does that not imply that there will be reservation of seats for communities?

Mr. Gandhi: It need not. As I say, there can be a clause of that kind, without specifying the number; but I do not mind even the numbers being specified. And you will please remember that that did not refer to the Musalmans at all.

Sir Sultan Ahmed: No, I am not talking about Mussulmans at all; I am talking about those four classes whom you mentioned: Commerce, Labour, Landlords, and so on. It is nothing to do with Mussulmans at all; they do not come into it.

Mrs. Subbarayan: May I also respectfully ask Mahatma Gandhi a question? You referred to the position of women. Suppose the Central Legislature does not have any women on it, then you will have a clause to allow that Legislature to co-opt women?

Mr. Gandhi: I would boycott that Legislature. A Legislature that will not elect a proper share of women will be boycotted by me, and I speak for the Congress also. There would certainly be full protection. How it can be brought about is incredibly simple; but I would be no party to a setting up of special constituencies.

Mrs. Subbarayan: Not special constituencies; but supposing women do not come in by general election, then you will allow the Central Legislature to elect some women?

Mr. Gandhi: Then they have got to enjoy the honour of being elected by the elected legislators, before they can conduct their proceedings.

We must remember, Sir, that our object is to work together. Why?—For the peace and happiness of India. And if our object be to work for the peace and happiness of India, there must be give and take. We have made our representations to Their Highnesses that we would like to have, for example, some sort of elective system for the Lower House. We may expect that Their Highnesses will give due weight to that opinion. It may be that, in some States, our suggestion can be carried out, while it may be that in some other States it cannot be carried out to a certain point; but, if we both desire to work together, I think we ought to leave it at that. Just as I for one (and I am sure most of us) would object to Their Highnesses dictating as to how British India should be represented, in the same way, if we try to place ourselves in their position, we ought to be able to agree that there should be mutual understanding and no idea of dictation.

I think, Sir, that that is all I need say about sub-head (i) (a). With regard to general points involved in sub-head (i) (b) and sub-head (ii), I say it may be that the method of nomination will have to be adopted by certain States. It may be that some method intermediate between nomination and some form of election will have to be adopted. But let us not forget why we are federating. One great object of federation is to bring about an improved status for our common Motherland. Let us suppose a representative of India goes to the League of Nations under present conditions, and let us suppose that a representative of India goes to the League of Nations in future, representing a federated India. Cannot that latter representative hold up his head much higher than any representative, however exalted, however able, however truly representative he may be, who goes at the present moment? If one of the vital objects of this Federation be to exalt our common Motherland, I think, by trying to quibble, by trying to create differences where differences should not exist, we shall add difficulties to this already difficult problem. From that point of view again I would appeal to my colleagues from British India, as I would appeal to Their Highnesses, that there be more give and take—more understanding—for the common good of our common Motherland.

I will next say a few words about sub-head (iii). I am of opinion that, for many reasons, election to the Upper House by the indirect method is *primâ facie* commendable; but, as Sir Tej Bahadur Sapru points out, that indirect election to the Upper House may be by members of the Provincial Legislature or it may be a more extended electorate, namely the members of the Provincial Legislature along with members of local bodies, such as district boards and municipalities, and—if I may just throw out a suggestion—even the Senates of Universities.

As I say, a system of indirect election to the Upper House may be desirable; and, if you have a system of indirect election to the Upper House, you are likely to have an Upper House where the popular element will be represented. I hope the members of the

British Delegation will not misunderstand me when I say that in that way we may hope to avoid, in future, the clash of interests which has marked the history of the Upper House and Lower House in this country. As Sir Tej Bahadur Sapru points out, you cannot have an elected Upper House and deny them certain rights. If you do deny them certain rights then perhaps the object of an Upper House has gone. On the other hand, if you do give them certain rights, then there should be a popular element or else conflicts are almost inevitable. But, having that popular element, you should also have other points before you, namely, experience and age; and, if I may say so, your aim should be, if possible, to have an Upper House which represents the national interest rather than party interests. If that be our ideal of an Upper House, let us not think of the House of Lords in this country. Let us think rather of some of the more modern Upper Houses and adapt them to conditions such as prevail in our country. If we are successful in adapting them in this way, I think we shall find that much of the prejudice against an Upper House, which exists among democrats at present, will rapidly disappear. In this connection I would incidentally refer to one of our great difficulties, namely, our communal question. A true Upper House, in which there will be the better mind of the Muslims and the better mind of the Hindus, will mean, I am sure, that the communal question will lose many of its present difficulties.

I have supported and I do support indirect election, however, on the understanding that the kind of picture that has been presented to us will be the final picture. If, on the other hand, that picture is changed in important details—if, on the other hand, the Lower House be a Lower House of a different character—then, perhaps, we may have to think of an Upper House chosen by direct election. But, in any case, that direct election should not be of the very limited character of that of our present Council of State. I do not propose to develop that point, because I do hope that the picture which was presented last year—the picture which has brought Mahatma Gandhi and Pandit Malaviya to this Conference—will ultimately hold good.

Now, I have a suggestion to offer, not only with regard to this point, but also in regard to [illegible] oints which will arise under the next heading. We in [illegible] ee can make only general observations. It will be [illegible] rable to [illegible] whole matter properly investigat[illegible] e c[illegible] s committee, I suggest, should [illegible] inc[illegible] of officials and non-officials, w[illegible] er [illegible] out [illegible] the lines of [illegible] sed the m[illegible] is Federal St[illegible] c ha[illegible] this qu[illegible] dicated som[illegible] ons [illegible]'s G[illegible] tever that [illegible] be wi[illegible] ive weigh[illegible] t[illegible] tic[illegible] details det[illegible] ant[illegible]

Either at that stage or at a later stage, the small committee that I have suggested should be appointed. Parenthetically, I would observe that, even in the working out of those details, we should not follow the mistake made in connection with the Montagu-Chelmsford Reforms. Then some official, or officials, drew up Devolution Rules, which were accepted by Government without consulting the representatives of those non-officials who had to work under the Rules. This committee should be charged with the duty of gathering facts, and may well have alternative terms of reference—one of the alternatives being on the basis of direct election, and another alternative being on the basis of indirect election, treating the village as a unit.

I now wish to say a few words with regard to the next sub-head; and, with regard to this sub-head, I will begin by making some general observations. Self-government will be a mere shadow of self-government if ninety per cent. of India's people, who live in villages, do not get a chance of having an effective voice in the elections. It is evident that, where a constituency consists of villages and also of municipal towns, the votes of the municipal towns prove a very important factor. If you take the present territorial constituencies, at the one extreme you have as large a territorial unit as 80,000 or 60,000 square miles. To call it a territorial unit for the purpose of returning a member seems, in my humble judgment, a misnomer; but it is nothing uncommon to find 10,000 or 15,000 square miles as your territorial unit. Within these territorial units we often have a number of towns, and there are also scattered villages. Out of the seven lakhs of India's villages, more than five and a half lakhs have a population of only 500 or less each. In my Province, which I know better than any other Provinces, there are 85,000 villages. Of these, nearly 60,000 villages have each a population of less than 500, the total population living in them being only 11,000,000. On the other hand, in less than 3,000 villages, with a population of 2,000 to 5,000, more than 8,000,000 reside. Taking, as an example, the joint constituency of Rajshahi and Chittagong, the area is 30,000 square miles, and there are a number of towns. Supposing that three candidates are fighting for being elected, naturally each one of them will try to get the votes in the municipal towns, where they can go more easily. Naturally they can bring to the poll a large number of voters from municipal towns; but what happens to the 90 per cent. who live in villages? In my Province 94 per cent. live in villages. Do they get any franchise? We may think that they have a franchise, but their votes are not the determining factor. In a village consisting of 500 people, less than half are over 21. Therefore, in every election it is the votes of the towns which prove effective. For that reason, I say, it is a pure delusion when we speak of self-government for India.

Therefore, the first proposition that I would like my colleagues on this Committee to consider, and to consider very carefully, is the question of separating constituencies into urban and rural. We

have already the beginnings of that. In my Province, for example, Calcutta, has a separate constituency for returning a non-Muhammadan member to the Legislative Assembly. A number of towns around Calcutta—the suburbs of Calcutta—have a separate constituency for returning another non-Muhammadan member to the Legislative Assembly. There is yet another urban constituency. Apart from those three urban constituencies, in the rest of the Province the rural voters and the urban voters are to be found in one constituency. I see opposite me my esteemed friend, Mr. K. C. Neogy, who has come here in another capacity. He represents the Dacca Division. I am asking, what attention does he pay to the voters in villages, where the adult population is 250 and the number of voters is perhaps 5, and which he can only approach after travelling for three days, as compared with those in a town like Dacca, with a population of about 2 lakhs? It must be remembered that, in many parts of East and North Bengal, one has to travel in boats and other kinds of river craft. Therefore—if I may use the colloquialism which the Lord Chancellor uses so often—if we get down to brass tacks, we must admit that rural and urban areas should be separated into different constituencies.

There is another question which should be examined in this connection. I think that we are more or less agreed—or, if we are not agreed, the recommendation of the Federal Structure sub-Committee last year was—that the total number of members of the Lower House should be 300. Let me assume that, barring special interests, if special interests be retained, there will be somewhere about 200 or a few more members for British India. At the present moment we have only 105. That means that you can reduce these big territorial constituencies by about half; but, if you give separate representation to urban areas, as I think that you should, then the rural constituencies will be even more difficult to form. What, then, is the remedy? One remedy may be to have 500 members altogether for the Legislative Assembly for British India alone.

Sir Maneckjee Dadabhoy: We are not discussing at present sub-head (i).

Sir Provash Chunder Mitter: I am dealing with sub-head (iv). One remedy may be to adapt the suggestion that was made in the Nehru Report. Whether I agree with the suggestion about adult franchise or not, is another matter. As I believe in frankness I will say at once that, personally, I do not agree with it. However, if you take the 500 members of your Legislative Assembly for British India alone, that will mean that the average size of the constituencies will be about 2,300 square miles. In the Nehru Report, however, there was no question of Their Highnesses coming in. If you have to provide seats for the Indian States, you will have to allow 200 or 250 for them, and then the total strength of the Legislature will be 700 or 750, which, for other reasons, is likely to be too big. If you take 200 or thereabouts as the total size of your British Indian section of the Legislature, then either you will have to submit to very wide areas, which will result in

the candidate and elector having no touch with each other, or you will have to think of something else. In this connection, I may point out that the Federal Structure sub-Committee did consider, and unanimously *reject*, the question of indirect election. If I may say so, I would have rejected the question of indirect election of the type which was before the public of India. One type of indirect election was suggested by the Simon Commission's Report, namely, that the local legislature should be the electing unit. I *have no hesitation in saying* that that *is* thoroughly unacceptable to every section of Indian public opinion. Another type of indirect election with which we in India were familiar was the system that obtained under the Minto-Morley Reforms, where members for local bodies were the electors. The total number of such electors, however, *was very small. Experience proved that these electoral* colleges under the Minto-Morley scheme, with a small number of electors, were unsatisfactory. The Indian public, therefore, had no hesitation in rejecting that system of indirect election. The suggestion made by Mr. Gandhi, if properly worked out and duly *considered, may throw a new light upon the matter.* Again I will illustrate that suggestion from my Province. There are 85,000 villages. If you could give to the primary voters in these villages some sort of adult franchise, and ask them to nominate one member to represent the village, as Mr. Gandhi suggested, you would be *following a system with which we in India are very familiar.* Speaking for myself, I would allow each village unit to elect 5 to 10 voters. We are familiar with the system of Punchayat, which means a body of 5. We—the Indian members at any rate—know what the village communities in India mean to the country. It is a *mistake to think that the village communities in India were like* your parish councils or even like your borough of county councils. These village communities in India were not merely concerned with the health and amenities of the villages. True, there was no ballot box. But the Punchayets were charged with the preservation of peace and the fiscal administration of the villages. They *looked* after the protection of the villages; they looked after the collection of the revenue which was to be handed over to the Government or the Ruling Prince. They were, in that sense, although there was no ballot box, an example of true self-government. When dynasties tumbled, when legions thundered by, it was these village communities which kept up civilisation in the villages of India. By *all means, therefore, study the example of other countries.* Study the systems in Australia and Canada and European countries; but assimilate the result of your studies and apply them to conditions in India. If you truly assimilate the result of your studies, and if you provide 5 to 10 voters for each of these villages as a unit, *then, speaking for India as a whole, there may be* 3 millions *(if* you allow 5 each) or 6 millions (if you allow 10 each) of voters for rural areas alone. Then instead of the present one and one-eighth millions you will have a far more representative system of election. The system of indirect election has never been considered by the Indian public; *and, in view of the course advocated by* Mahatma

Gandhi, this system ought to have a fair chance of being properly considered. I do not for a moment suggest that this idea should be accepted all at once. I do suggest that, for the committee that I have mentioned, one of the terms of reference should be indirect election, on the lines indicated, at any rate for the villages if not for the towns.

I may say, Sir, that I have for a long time held the view that this system of election is better suited to Indian conditions. Last year, when I had the honour and the privilege of serving on the Franchise sub-Committee, I put forward this view. The reason why this view was so prominent in my mind was that I had a good deal to do with four General Elections in my Province. Two of these General Elections I had to conduct under the immediate leadership of that great Nationalist, Surendranath Banerji; and I found that, in every election, from whatever party the candidate came—and even those who did not belong to any party but called themselves Independents—all concentrated their attention on securing the votes of the town population. They neglected the votes of the villages, because these votes were so ineffective. "Well," we glibly say, "let there be direct election"; but I should like to know more details of every Province, as to what would be the effect of such election, what will be the total area of each electorate, what will be the total number of voters, and how will the strength of the urban and the rural voters compare. I would also like to have more details as to the franchise. Therefore, all I am pleading for is that we should not decide in advance, without investigation of the facts, but we should decide when we have more materials, more facts. I see around me some of the best lawyers in India, and I think I can always remind them that, if we want to decide properly, we should not ignore the facts; we should not attempt to apply the law before we know what our facts are.

I will now refer to the next point, namely, the question of the representation of special interests. I agree with the unanimous recommendation arrived at by the Federal Structure sub-Committee in the last Session. It says:

> "Opinion was unanimous in the sub-Committee that, subject to any report of the Minorities sub-Committee, provision should be made for the representation, possibly in both Chambers, and certainly in the Lower Chamber, of certain special interests, namely, the Depressed Classes, Indian Christians, Europeans, Anglo-Indians, Landlords, Commerce (European and Indian) and Labour."

If that recommendation stands I have nothing to say. Certain criticisms have been offered; but, in view of the facts that these recommendations were unanimous, and that the members of the previous sub-Committee constitute the majority of the present, I expect that the recommendations will stand. I will, however, just deal briefly with some of the criticisms offered. My friend, Dr.

Ambedkar—if I followed him aright—is of the opinion that the only class that should have special representation is the backward class. Even as regards Labour, he is of opinion that, if there be adult suffrage, Labour does not require special representation. As regards the capitalistic classes, like Commerce and Landlords, their very name was anathema to him. He said that there is no special representation of these classes in this country. I can quite understand that argument; but when we have proved democracy, when we have passed through the stages through which your great country has passed, there need not be the same need for special representation of the different classes mentioned above. Your present electors were not your electors even in 1917, when their number was much less. Your present electors were certainly not the electors after the Gladstone Act of the 'eighties. Your present number of electors were certainly not the electors after Disraeli's Act in the 'sixties, and, if I remember aright—I am speaking from memory—you had a little over one million voters after the Reform Act; you had something like two million voters after Disraeli's Act; and you had something like five million voters after Gladstone's Act. Well, apart from the initial five or six centuries, you have taken more than a century for the last phase of your development. Let us have at least thirty years for our development. During this intermediate period, I am sure that it is necessary—it is certainly desirable—that these separate interests should be properly represented. Take Commerce. Well, in the new system of representative government, I am sure Commerce will be called upon to pay more than it pays at the present moment. Take landlords The same observation applies to them. Would you not allow the Commerce representatives, the Landlords' representatives, even to have their say before the majority decide against them, because in any case they will be in a hopeless minority? I fully believe in government by persuasion, by discussion. You should allow these interests to have sufficient representation, so that they may put forward their view-point. They have ultimately got to depend on the judgment, the sense of fairness, of the majority; but the majority will in no case be a majority of these classes. For all these reasons I submit that the unanimous recommendation arrived at last year should stand so far as this point is concerned.

As regards head No. (vi), I suggest that the age limit should be not less than 35. I further suggest that, as Sir Tej Bahadur Sapru pointed out, public service should also be an element.

Mr. Sastri: What is public service?

Sir Provash Chunder Mitter: What the actual rule for defining public service will be, we may leave to a later decision; but as regards those with public service, no property qualification would apply to them. Public service may mean various things. For example, my friend, the Right Honourable Srinivasa Sastri, has rendered distinguished public service in South Africa and Canada; that is public service. Mahatma Gandhi has rendered distinguished public service. As to public service, those who understand the

English language understand what it means. What definition you ought to give to it is a different matter.

Sir Muhammad Shafi: Who will decide the claim put forward by anybody and everybody as to whether A, B or C has rendered public service or not?

Sir Provash Chunder Mitter: I would like distinguished advice from Sir Muhammad Shafi on that point. If you want to decide it here, let us decide it here. If you want to get it decided somewhere else, do so. But it is no good quibbling. I would like to have your advice, Sir Muhammad Shafi, as to what in your opinion constitutes public service.

Sir Manekjee Dadabhoy: Honorary Magistrates also render public service; would you include them?

Sir Provash Chunder Mitter: Not necessarily. However, I think, Sir, we are assembled in this Committee to do serious business. If any view point is put forward against the cherished point of view of somebody else, let them not try to kill it by ridicule. If we want to discuss this, let us discuss in this Committee, or a smaller sub-Committee, what public service should mean. But, much as I respect you, Sir Muhammad, ridicule will be of little assistance to this Committee.

Sir Muhammad Shafi: I put a question merely to elucidate the point.

Sir Provash Chunder Mitter: I have left it to you, Sir Muhammad. I shall be perfectly content if you will draw up a list of public services.

Chairman: It will clearly have to be defined in the constitution if you are going to have this.

Sir Provash Chunder Mitter: Yes, certainly, that is my point; it will have to be very carefully defined in the constitution. If we want to define it here, let us go into it.

Now, Sir, the next point is:

> "What requirements, if any, are to be made in the matter of an Oath of Allegiance on assumption of a seat in either Chamber?"

I have no hesitation in saying that there ought to be an Oath of Allegiance. On that point, very possibly, the reason why it was specifically put was to obtain Their Highnesses' views. From what I gather from some of the representatives of the Indian States, I think they have no objection. What the form of the Oath of Allegiance is to be, is a matter which can be left to the draftsmen. There is another reason why, on the terms of this reference, we should have an Oath of Allegiance. Under the terms of this reference we are aiming at equality of status within the British Commonwealth of Nations. Now, the admitted head of the Commonwealth is the King-Emperor. Anyone who wants to come within this Commonwealth should have no hesitation in having an Oath of

Allegiance; and, as Their Highnesses do not object, I do not see that we need have much objection.

Then, Sir, the last item is:

> " What provision, if any, shall be made in each Chamber for nominated members, and for what purposes."

I may say generally that I agree with the recommendations of the Federal Structure sub-Committee, and I need not elaborate that point; but, if later on, the recommendations be not accepted, then I reserve to myself the full right of making my submissions. That is all I wish to say.

(The Committee adjourned at 4-10 p.m.)

PROCEEDINGS OF THE TWENTY-FIFTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON FRIDAY, THE 18TH SEPTEMBER, 1931, AT 11 A.M.

HEAD 2.

Questions connected with the Election of Members of the Federal Legislature—(concluded).

Dr. Ambedkar: I would like to ask Mr. Gandhi this question: The Congress has not considered at all the question regarding the nature of the Federal Legislature or the Federal Executive. The only question that the Congress has considered is whether it will be part of the British Empire or whether it will be independent. Consequently, what Mr. Gandhi said yesterday might be his own personal view. I should like to ask whether he was expressing his own personal view, or whether he claimed in that respect to represent the views of the Congress. Then I should like to ask him a second question. In so far as we know of the proceedings of the Congress which are open to the public, this question was not considered by the Congress to my knowledge. It may have been considered in secret by the Congress. Therefore, I ask the question. The next question is whether the question of indirect election to which, I think, he gave his support yesterday, was not put forward by Mrs. Annie Besant in the Home Rule Bill which was formulated, and whether that method of constituting the Federal Legislature was not definitely rejected by the Congress.

Chairman: Those are the three questions. No doubt Mr. Gandhi will consider the answers.

Mr. Joshi: I am very grateful to you for giving me this opportunity, and I am also very grateful to the Committee for their indulgence in allowing me to refer to one special question. The point upon which I want to touch now is the representation of the special classes.

We shall not ask for special representation of the working classes on two conditions. The first condition is, if there is adult suffrage; and the second condition is, if there is no special representation of any other class. But if there is no adult suffrage or if other classes get special representation, then we shall claim special representation for the workers also.

On the question of the adult franchise I do not wish to dwell here—this is not the Committee for it. But it is necessary for me to make clear that we believe that, if there is adult franchise, and if there are proper election rules for controlling extravagant expenditure and also providing for certain minimum election expenses being provided out of State funds, we believe that if Labour organises itself properly, Labour will be able in time to secure its share in the Legislatures. But, whether there is adult suffrage or not, if other classes, such as the Landholders or Trade and Industry, ask for and get special representation, then Labour also will claim special representation.

My Lord Chancellor, the present position of Labour representation in the Indian Legislatures shows great neglect of Labour interests. In the Legislative Assembly, by rule, there is not a single seat reserved; but, by courtesy, Government nominate one man, while the interests which we have to oppose sometimes have as many as twenty-one seats. It is necessary for me to name those interests. I will consider all the European interests, all the Landholders' interests, and the interests of Trade and Industry together. These three interests may be described as the same—the interests of capitalists. They have as many as twenty-one seats reserved for them. Besides this, they, being very wealthy people, get representation through ordinary constituencies, while there is only one seat for Labour in the Legislative Assembly. There is no seat in the Council of State at all. As regards the Provincial Councils, there are only ten nominated seats for Labour in all the Councils together, while there are eighty-six seats given to the Europeans, Landholders and Trade and Industry. This position clearly shows that Labour is not properly represented.

The Royal Commission on Labour, over which Mr. Whitley presided, admitted this fact, and they have, at pages 462 and 463, dealt with this question. They say that, even if the minor reforms made in 1926 are taken into account, Industrial Labour, by comparison with the employers, has been under-represented. They admit this fact, and they have made some suggestions. One of their suggestions is that Labour representation must be adequate. They do not state that " adequate " means so much; they have not gone into it; but if you would ask me what is meant by " adequate," I myself hold that Labour should be represented in accordance with its numbers. At least, Labour representation cannot be less than the representation of the Europeans, the representation of the Landholders and the representation of Industry and Commerce put together. We must at least get as much as they get; and our

claim is that we should get representation in accordance with our numbers. We do not want any special favour at all.

Then, the Royal Commission on Labour also recognises that this representation should be by election. They are opposed to nomination on several grounds. I do not wish to go into those grounds at all; but they definitely state that, in their opinion, the proper method of representing Labour in the Legislatures is by election. Then they suggest, as the method of election, direct election by members of registered trade unions as constituencies—they suggest that, for the representation of Labour, the trade unions should be regarded as constituencies. This is concerning Industrial Labour.

We claim—and the Royal Commission on Labour also admits—that some provision must be made for the representation of Agricultural Labour. It is true that to-day there are no special registered organisations for Agricultural Labour; but there are organisations called the Kisan Sabhas, which are the beginning of some organisation; and I am convinced that, if we once recognise the principle that the representation of the agricultural wage-earners should be through their organisations, there should be no difficulty in securing registered organisations.

Then, Lord Chancellor, there are one or two other classes which are also the working classes; that is to say, the labourers, for whom I plead that they shall have representation. These are the agricultural tenants. They are not wage-earners in the strict sense of the word, but they are a class whose interests must be protected by special constituencies if there is to be special representation for other classes. You cannot give special representation to Landlords and refuse to give special representation to the class of Tenants.

Then, My Lord Chancellor, there is one more class which is also a labouring class. That class is the class of Untouchables Ninety-five per cent. of the Depressed Classes or Untouchables are labourers. Therefore I plead that what applies to these other classes applies to the Depressed Classes with much greater force. Lord Chancellor, I was sorry yesterday to hear from Mahatma Gandhi that, although he was willing to recognise the claims of the Muslim and Sikh communities for special constituencies, he was not willing to concede that facility to the Untouchables. It was rather a shock to me to find that the Indian National Congress and Mahatma Gandhi should recognise the historical importance of conquest—which is the historical importance of the Muslim and Sikh communities—while they should not recognise the historical importance of oppression. The Depressed Classes have been an oppressed class for centuries in India, and this historical fact should not be ignored by anyone. I was, therefore, very sorry that Mahatma Gandhi, while conceding the historical necessity of giving special representation to the Muslim and Sikh communities, would not recognise the similar claim of the Depressed Classes. I feel, Lord Chancellor, that if there is any class in India which requires special representation and protection, it is the Untouchables or Depressed Classes. Whatever this Conference and this Committee

may do as regards special representation, if you really want to be fair and just you cannot ignore the claims of the Depressed Classes to be treated as a special class. I hope, Sir, that the Committee will insist that the interests of the Depressed Classes should not only be protected but that they should get their fair and due share of representation in the Legislatures. My Lord Chancellor, I am very grateful to you for giving me this further opportunity.

Sir Akbar Hydari: Does Mr. Joshi want the Depressed Classes and Labour to have special representation by excluding them from voting in the general electorates; that is to say, will they form separate electorates?

Mr. Joshi: My Lord Chancellor, I consider the Depressed Classes to be somewhat different from Labour; in their case there is an absolute necessity for special representation. If there is to be a special constituency for anybody, including Muslims and Sikhs, I would first give a special constituency to the Untouchables. As regards Labour, I made it quite clear that, if there is adult suffrage and if there is no special representation for any other class, I shall not claim special representation for the working classes at all. I would take my chance at the polls. But there is one thing I want to say, to make my point clear: if there is special representation, it really means that Labour will get its share in the constituencies to the extent to which it can. Special representation will be special representation. As no man who is engaged in trade or commerce will be disqualified from voting in the ordinary constituencies, so no labourer should be disqualified from voting in the ordinary constituencies simply because there are separate constituencies for Labour.

Mrs. Subbarayan: Lord Chancellor, I would like to make a few remarks on this Head, but I do so with much diffidence and hesitation, being conscious of my lack of experience of the work of the Legislatures, and also conscious of the discussion to which we have been listening. But, as a member of this Committee, I feel it is my duty to tell the Committee what I feel on this Head, and I hope the Committee will patiently bear with me.

As regards questions (i) and (ii), may I say that I welcome the assurance given by Their Highnesses of Bikaner and Bhopal that they are prepared to make arrangements to allow their Assemblies to have a voice in the selection of their State representatives for the Lower House. I hope that other States also will follow their enlightened example.

As regards (iii), like Mr. Gandhi and Mr. Joshi I would prefer to see a single Chamber in the Central Legislature, if adequate provision is made to give it that weight and stability which a Second Chamber is believed to give to a Legislature. If that is done, I think the functions of a Second Chamber could be well performed by a single Chamber. The financial economy which would be effected is a point worthy of consideration in a poor country like India, as Mahatma Gandhi pointed out to us yesterday.

If, however, a Second Chamber is decided on, I would favour the method of indirect election—the representatives from the Provinces to be elected by the Provincial Legislatures by the single transferable vote; but I must also say that I am strongly of opinion that the Lower House should be the predominant one.

As regards (iv), I am in favour of direct election to the Lower House. Sir Tej Bahadur Sapru and other speakers have already clearly stated their views about this, and I entirely agree with them. Like Dr. Ambedkar, I believe that the strength and force of representative government lies in the tie that binds the elected and the elector together. I feel it is of the greatest importance that every elector should feel that he is in direct touch, not only with the affairs of his own Province, but also with those large questions which affect the safety, the happiness and the prosperity of his country as a whole, and which will be in the charge of the Central Legislature. I know that the method of direct election is rather a cumbrous one at the present time in India. Though I have myself not been a candidate for any Legislature, I have closely watched the four general elections which have been held under the Montagu-Chelmsford Reforms; and I quite realise that the vastness of the area of a territorial constituency, the large electorate, the transport difficulties and so on, make direct election very difficult. But I think arrangements could be made to make this machine work more easily. As I stated the other day, I hold that our main object should be to try to build up a national feeling. We can help to effect this by encouraging in every elector a personal and direct touch with the deliberations and acts of the Central Government, and a feeling of responsibility for them.

As regards (v), with your permission, Lord Chancellor, I should like to take it up last, as I wish to say a little more about it than I do about the other items.

As regards (vi), I have already said that I do not believe an Upper Chamber is necessary; but, if it is decided to have an Upper Chamber, I certainly do not approve of the ownership of property being a necessary qualification. I can understand education, experience and public service being necessary qualifications, but I cannot understand why ownership of property should be a necessary qualification. This, of course, is my general view; but I am also particularly opposed to it because it would exclude a large number of women from eligibility to this House for the mere reason that they do not hold property because of present law and custom; and I am particularly anxious that women should be in both Houses of the Legislature, if there are two Chambers.

As regards (vii), I leave this to our legal experts on the Committee.

As regards (viii), I am not in favour of the policy of nominating members to any Chamber of a responsible Legislature, but I shall reserve my final remarks until I know more details about the proposals to have what are styled official Ministers in charge of Crown subjects.

Now I should like to say something about item (v). As regards item (v), I would, with your permission, briefly state our views on the question, which we raised at the last Conference, as to whether women should have some special provision to ensure their presence in the Legislatures. Perhaps it is a matter which could better come under the purview of the Minorities Committee, where it was raised last year; but, as it also seems to come under this Head, I may perhaps be allowed to say a word or two about it here.

First of all, I should like to say a word as to what happened at the last Conference. My colleague, Begum Shah Nawaz, and I circulated to the Conference a memorandum on the political status of women in which we asked, among other things, that in addition to ordinary open election, there should be a temporary reservation of seats for women in all the Legislatures. This claim was based on the grounds that the principle of reservation of seats was to be a recognised feature of the new constitution; that women were not as yet in a position of political, economic and educational equality with men; that their actual presence in the Legislatures in sufficient numbers was the most essential in the opening years of a new India; but that we were convinced that the general public in India, as in most other countries, was not yet sufficiently accustomed to the idea of women taking part in legislative work to return them in any numbers at the polls, though one or two might be so elected.

In the Minorities sub-Committee I put forward the same claim and suggested that such reservations should last only for three elections. I also indicated that an apparently suitable method was that of election by the Legislature immediately after its own election, voting by proportional representation. This, we hoped, would avoid the difficulty of distributing a few seats among many territorial constituencies, and would also avoid the introduction of the communal question, from which the women's movement has been happily free up to the present time.

Chairman: Do you mind telling me whether you agree with paragraph 11 of the Rep[illegible] the Minorities sub-Committee? If you will kindly look at [illegible] u will see tha[illegible] vs this:—

> "11. No clai[illegible] ate elector[illegible] the reservation of seats [illegible] torates wa[illegible] behalf of women who shou[illegible] be eligib[illegible] on on the same footing as n[illegible] order to f[illegible] e public mind with the [illegible] taking [illegible] part in [illegible]olitical life and [illegible]r interi[illegible] tion on [illegible] Legislature, it [illegible] 5 per [illegible] seats in first three Co[illegible] reserv[illegible] and it suggested that [illegible] filled [illegible] by the [illegible] members [illegible] ional [illegible]."

[illegible] rve there th[illegible] urged [illegible] thing [illegible] but there [illegible] Wh[illegible] ew as t[illegible]

[illegible]n: That [illegible] or.

Chairman: I thought it was. Thank you very much. You stand by that now?

Mrs Subbarayan. I am going to speak on it.

Sir Muhammad Shafi: May I ask Mrs. Subbarayan a question with reference to this point? Is not it a fact, Mrs. Subbarayan, that the all-India Women's Conference passed a resolution against any reservation of seats for women?

Mrs. Subbarayan: I am going to refer to that. I wanted to explain what happened: I did not know if all the members of the Committee were aware of what happened last year.

It may be within the recollection of this Committee that, when the Report of the Federal Structure sub-Committee was considered by the Conference in Committee last year, my colleague, Begum Shah Nawaz, urged that, on paragraph 34, women should be added to the list of special interests which should be entitled to reserved seats. May I just say, in general, that in everything that we did last year we consulted as far as possible the views of such Indian ladies in India and in England as we could approach in the short space of time at our disposal, and clearly understood that we had their support?

Since the last Conference, the question has been considered amongst women in India, and I should like to place briefly before the Committee the position as it now stands. I want to point out that our proposal has not been supported by three of the leading women's organisations in India—the all-India Women's Conference (which is the largest organisation of women's associations in India, with constituent branches throughout the country, and which claims to speak for the women of India), the Women's Indian Association (which has been doing remarkable social and educational work), and the National Council of Women (which also works in the interests of women). These organisations issued a joint memorandum last May, and, with your permission, My Lord, I will read extracts from it, relevant to the question under discussion.

> "The National Council of Women in India, the all-India Women's Conference, and the Women's Indian Association welcome and endorse the declaration of the fundamental rights of citizenship in India under the future constitution made by the accredited leaders of the nation, namely, equal rights and obligations of all citizens, without any bar on account of sex; no disability to attach to any citizen by reason of his or her religion, caste or creed, or sex, in regard to public employment, office, power, or honour, and in the exercise of any trade or calling. This declaration of the fundamental rights of citizenship in India having been made, the recognition of women's equal citizenship in all matters relating to franchise, representation, or employment has become an accepted principle. The present memorandum is, therefore, concerned only with the actual methods by which women may be enabled to exercise their legitimate

rights. The women of India on the basis of their admitted and declared equality recommend that every man and woman of the age of 21 should be entitled to vote, and offer himself or herself as a candidate, at any election to an administrative or legislative institution. We are confident that, if this practical equality is secured for women in the matter of franchise, they will be able to find the way to the legislative and administrative institutions of the country through the open door of ordinary election. No special expedients for securing the presence of women on those bodies, like reservation, or nomination, or co-option, would then be necessary. The women of India have no desire to seek any special favoured treatment for themselves as long as their full equal citizenship is recognised in practice as it is in theory."

My Lord Chancellor, although these views do not quite represent my sentiments, I should feel that I was lacking in my duty to this Committee if I did not put them (supported as they are by a large body of organised women's opinion) fully before the Committee. I personally stand as I stood before, by the belief that there should be some provision in the constitution to ensure that women shall take a place on the Legislatures in the first formative years of the new constitution. I do not wish now to adopt any particular phraseology for it, as it is somewhat different from the accepted definition of reservation of seats. I will only say that I did not lightly adopt that view last year, and I still think that it is in the best interests of women, which I have deeply at heart. I therefore welcome warmly Mahatma Gandhi's statement yesterday of his views on the subject.

I must also tell the Committee that in this view I know that I have the support of a number of individual women who are doing important social and educational work in India, who have asked me to continue to press it. They, like myself, base their views on practical grounds. We find it hard to believe that the granting of equality in civic rights will be immediately followed by equality of opportunity. We have much lee-way to make up before we can stand on any kind of real equality with men. The women of India, like those of other countries, have to surmount a great deal of apathy and prejudice at the hands of both men and women; and some provision such as was suggested last year seems to me the quickest and surest way of bringing this about. We visualise the practical difficulties of the situation; for instance that, as Indian women do not usually hold property, they will find it difficult to afford to stand as candidates; that, owing to the vastness of area, the large electorates, and the difficulty of transport, women will find the practical difficulties of standing at an election most formidable, and so on. May I finally say that we who support this proposal do not regard it as a privilege or a favour, nor do we feel it in the least derogatory to suggest such a provision?

It is difficult for me to say anything more here and now on the question. I have not yet had time to discuss the position fully with

my women colleagues together, one of whom has only recently arrived in England, while the other is not yet here. Moreover, it is a question which affects Provincial Legislatures as well as the Central Legislature. I would, therefore, with your leave, My Lord Chancellor, reserve further remarks on this subject for the Minorities Committee, which also deals with the representation of special interests, and before which the question was raised last year.

Mr. Joshi: I should like to ask Mrs. Subbarayan, when she supported the proposal for co-option of women members, whether she does not think that, when the power of co-option is given to the majority of members in the Legislature which will form the Government, co-option is really equivalent to nomination by the Government.

Mrs. Subbarayan: No. It will be proportional representation.

Mr. Joshi: It will largely be nomination by the Government. I should like to ask Mrs. Subbarayan whether she does not think that any Government in power will use that power to strengthen its position instead of giving a fair representation to women.

Chairman: No doubt Mrs. Subbarayan will consider the matter and let you know later.

Diwan Bahadur Mudaliyar: It is with very great hesitation that, at this stage of this prolonged debate, I take part in it. I wish that we could go back to the atmosphere that prevailed in this Federal Structure Committee on the last occasion, and—without making any reflection whatsoever—regain some of that business-like character which was its predominant feature during the weeks that we spent last year and in the early part of this year. My Lord, I wish also that we could regain some of that co-operative spirit, and that good will to which Lord Reading in his opening remarks referred.

Chairman: I do not think that we have lost any of that. It is not a question of regaining it.

Diwan Bahadur Mudaliyar: At any rate, I hope that we will continue to maintain that good will.

Chairman: That is right.

Diwan Bahadur Mudaliyar: Normally I should not have referred to any of the items (i) and (ii) under Head 2. I would have repeated the statement that most of us made on the last occasion, that it was a matter entirely for Their Highnesses to decide, but, in view of some statements and arguments that have been advanced on this side of the Committee, I feel it my duty to make a few observations on these two items.

I stand by the position which we adopted on the last occasion, that, with reference to the method of election to either Chamber by individual States or groups of States, it is a matter entirely within the discretion of the State administrations and of the Rulers of the Indian States. All that has intervened since we parted has emphasised and confirmed that view. We are anxious, Lord

Dr. Ambedkar: Why do you want responsible government at all, if that is so?

Diwan Bahadur Mudaliyar: It is true that it has been suggested very freely that they have been guilty of Machiavellian methods on more occasions than one—a suggestion which, I venture to think, is not just to them, nor even fair to the large body of Rulers of Indian States. I therefore think that there is no point in the observation that the representation of the Indian States, if it is not secured by election of Indian subjects, necessarily means the creation of a bloc. On this question I am also reminded of the fact, which many of the members of the Committee know, that the State Rulers themselves are putting forward, on points which are called political subjects, on points like dynastic succession and misrule in a State, proposals which will materially alter the nature of the control which is now exercised in these matters. It seems to me that these arguments give one more reason why those proposals should be pushed through, and the plans that Their Highnesses have put forward for the carrying out of these changes, with reference to dynastic succession and misrule in States, should receive the serious consideration of the British Government and should be brought to an agreed and successful conclusion. The argument that has been advanced by my friend Dr. Ambedkar merely confirms me in the view that we from British India also have an interest in seeing to the successful solution of that question

Lord Chancellor, I do not think I need trouble this Committee on this point any further, except to state that I fully agree with the proposition that Sir Mirza Ismail has laid down in these discussions, and which was referred to by my friend Sir Sultan Ahmed

On the question of the representation of British India in either Chamber, I venture to state that the large body of opinion on this side is committed, and definitely committed, to the principle of direct election so far as the Lower Chamber is concerned, notwithstanding what we heard, to the surprise of some of us, last evening On the simple ground that the contact between the candidate and the electors cannot be maintained in as close and as continuous a fashion as it is the desire of everybody to maintain it, I suggest that no sort of indirect election will be advisable. Congress precedents have been very largely invoked in support of the theory. I must be clearly understood not to make any sort of reflection, but I think those outside the Congress are perhaps in a better position to realise the working of its institutions than those who are actually taking part in those Congress institutions. And may I ask you, my Lord Chancellor—or, if you find it embarrassing to reply to the question, may I appeal to the experience of those in this Committee who are outside the Congress—whether it is not their honest conviction that the resolutions adopted at the Congress are the result of personal success rather than of the vindication of democratic principles? The method in which the Congress is organised and the Congress body is brought into being makes for dictatorship rather than for democratic rule. It may be that many of us believe that

There is only one word that I should like to add on a matter which has been adverted to, regarding the representation of the European community. Lord Chancellor, it was seriously suggested that a European may be represented in a general constituency, and that Mr. Charles Andrews may be one of the successful candidates to the Legislature.

Mr. Iyengar: Or Mr. Gavin Jones.

Diwan Bahadur Mudaliyar: I have no doubt that Mr. Charles Andrews will be a successful candidate; I wish I could be quite as hopeful of my friend Mr. Gavin Jones. But the point that has to be remembered with reference to these elections is this: if you once concede that a community as such has to be represented in the Legislature—whether it be the Muslim, whether it be the European, whether it be the Sikh—you have also to go a step forward and to concede that that representation should be to the satisfaction of the community concerned—that the community should feel that its representative is there to voice the opinions of that community. If, on the other hand you do not recognise the need for voicing the views of that community, then do not give representation to the community at all. But you cannot, by a sort of jugglery (if I may use that expression without offence), merely have a gentleman in European costume representing the European community, and say that the European community's views are represented on that body. If the choice were given to the European community, I do not know whether they would not prefer an Indian, like my friend Sir Maneckjee Dadabhoy, to represent them, to either Mr. Charles Andrews or Dr. Annie Besant, for the matter of that. Therefore, Sir, I venture to think that we must bear this fact in mind—that when you concede representation to a community, it must be representation which satisfies that community and which makes that community feel that its voice is being genuinely represented in that Legislature.

Lord Chancellor, it has been suggested that there should be an age qualification for the Upper House.

Sir Maneckjee Dadabhoy: I would like to know from Mr. Mudaliyar whether, in his advocacy, he would insist on the Federated Chamber of Commerce in India not being recognised as a special constituency.

Diwan Bahadur Mudaliyar: At the present time, Lord Chancellor, the age limit is 25, both for the Council of State and for the Legislative Assembly. I trust, Sir, that you will acquit me of any intention of being flippant; but when I hear suggestions that the age should be 35, 40 or 45, as my friend Sir Maneckjee Dadabhoy says . . . . . .

Sir Maneckjee Dadabhoy: I did not say 45, Sir; I said 35 or 40.

Diwan Bahadur Mudaliyar: 40, as my friend said—so that that House may be a sober House and may have experience and learning, I ask myself in all humility whether age and sobriety and learning always go together.

time, this latter class of questions might be left over to be discussed, in the first place, informally among ourselves; and when the results of this discussion have been submitted to Your Lordship, they might be taken up for formal and final discussion at this Conference. My object is that questions of the former class—that is to say, questions which have to be determined by the British Government as to the method and extent of responsible government to be established in India—deserve, and I hope will receive, primary attention. If this commends itself to Your Lordship, I hope the procedure may be reconsidered.

My Lord, the questions that have been raised under Head 2 relate to matters of detail which, I submit, can be settled and should be settled in a much shorter period of time; but there are one or two of them which are of outstanding importance and about which I feel I ought to say a few words.

The first is the coming in of the Indian States into the proposed Federation. I submit that some of my friends, who have criticised the attitude of the States and have pressed the Rulers of the States to agree to some method of election in the first instance for the members who are to represent the States in the Central Legislature, have not fully realised the situation in which the States are placed and in which we are placed. We must deal with the realities of the situation. India is one integral country, girt on three sides by the sea and on one side by the mountains. That integral whole stands knit together; and from time immemorial the Government which has been successful in India has been that Government which has exercised supreme, sovereign authority over the whole of that territory, so that the whole of that territory has been, as the expression goes, under umbrella. The Shivaji Maharaja used to be called the Chhatrapati—the one who had one umbrella waving over him. That has been the idea from the remote past. When the Mussulman came in, Emperor Akbar understood the position; and he and his successors tried to take up that position and succeeded in a large measure in doing so. Even during later times, My Lord, the Indian Princes were either in alliance with the central power or they were fighting against it, fighting against it to establish another central power in its place. Since the British Government came to India they have also followed that example of having one unitary government established in the country.

The States, which no doubt form one-third of India, are not subject States; and, though they are sometimes called feudatory States, many of them are not feudatory States at all—they are in friendly alliance with the Government of India as at present established. These States, therefore, have to come into the constitution of the future Government of India if that constitution is to prove satisfactory and to endure. We have agitated for years for the establishment of full responsible government in British India. We did not then consider what relations would exist between the Indian States and the new Government of India; but, at an early stage, it was recognised that there must be close and

friendly relations established between the Indian States and the new Government of India, as otherwise the position could not be satisfactory.

In view of that it is a matter of supreme thankfulness that the Rulers of the Indian States have had the patriotism, the foresight, and the statesmanship to recognise what the situation demanded; and I am sure we all feel grateful to them for having taken the larger view which they have taken in this connection. It is they who primarily offered to come into the Federation. The new constitution that was talked of for a long time was not intended to include the Indian States; and a difficulty was felt in that regard which was expressed on every occasion when the matter was debated in the Assembly. When first we took the matter up in 1924, Sir Malcolm Hailey—Mr. Hailey as he was then—took up that point as one of the main difficulties in the way of the introduction of responsible government in India—namely, the question of the Indian States. We were, therefore, not sure of our ground when the proposal for a Round Table Conference was started; and when the Indian Princes were invited to come into it, it was only to enable them and the representatives of British India to come to an understanding, possibly by means of new Treaties, regarding the part that they would take in the national advance of India and also regarding their representatives having some voice in the administration of questions which are common to them and to us in British India—matters, for instance, relating to Customs, Posts and Telegraphs, and similar subjects. That was all the idea that some of us had at the time; and when the Princes, inspired by their highly patriotic sentiment of contributing their full share to the building up of a new India, declared themselves in favour of joining an Indian Federation, I submit they earned the lasting gratitude of their countrymen.

In this situation, therefore, let us not be too greedy, let us not try to attempt too much. Let us welcome the coming in of the Princes, and let us welcome it with a full heart. Let us realise the difficulties in which they are placed. No doubt we had representative institutions in ancient India; we cannot forget our village communities and the growth of subsequent years. But since the British Government took charge of the administration of British India—since, rather, the British Crown took direct charge of the administration of British India—we have been proceeding very slowly; unfortunately, too slowly. We have been asking the British Government to introduce representative institutions, to give the people the right to vote at the election of representatives; and it has taken us forty-seven years to get the British Government to invite us to a Conference seriously to consider what the next step in constitutional advance should be.

The Reforms that were introduced at the instance of the Congress during the time of Lord Lansdowne, in 1892, and at the instance of Lord Minto and Lord Morley, in 1909, and the subsequent Reforms of 1919, all gave an extended representation to

Indians in the election of members of the Legislative Councils. Personally, I believe in the principle of representation. I think that the English people deserve credit for, and they can well be proud of, the fact that they have shown the way for the introduction of this principle to all the civilised countries of the modern world. I believe in it, and I should be delighted if Their Highnesses would introduce or extend representative institutions in their own territories. I am confident that, as some of the States have already introduced such institutions, every other State will introduce them in course of time; but we must recognise the difficulties of their situation. The thing is entirely new. Even the progress that we have gone through in British India in several respects has not been experienced by some States. I cannot say by all, because I am happy to think that some of the Indian States have led the way of reform in the matter of representative institutions and universal compulsory education. I am glad to find our esteemed friend, His Highness The Maharaja Gaekwar, here, who was the first among Ruling Princes to introduce a large scheme of popular education, and who voted a very large sum for that purpose. We have, therefore, to wait and see, and to give time to Their Highnesses to introduce the principle of representation as and when they may find it convenient. Personally, I join with my friends in the desire that that principle should be introduced as early as practicable. I have had the privilege of speaking to several of Their Highnesses on this subject, and I have no doubt in my own mind that that principle will be introduced in many States at an early time; but it is neither wise nor graceful for us British Indians to insist that there shall be no federation with British India and Indian India unless the Indian States agree that the representatives, who will come to represent the States in the Federal Assembly, shall be elected by the popular voice. I submit that that is a matter which should be left to the judgment, the patriotism, and the statesmanship of Indian Rulers.

Dr. Ambedkar: Why are not you similarly kind to Sir Samuel Hoare, and let him take his own time for introducing popular institutions in British India? He will be grateful to you, I am sure.

Chairman: I do not think that we need discuss Sir Samuel Hoare's gratitude. That is a matter which is not before the Committee.

Pandit M. M. Malaviya: My friend, Dr. Ambedkar, forgets what I have said. I have repeated twice that I desire that the representative principle should be introduced into the States at once. I do not yield even to my friend, Dr. Ambedkar, in that desire; but I recognise a difference between my desire and Dr. Ambedkar's desire and the right of the Ruling Princes to take time to consider when and how the representative principle may be introduced in their States. My object, My Lord, in dwelling upon this point, is that the great scheme which is now under consideration should not suffer or be wrecked by an injudicious insistence (if I may say so) upon the States introducing the principle of representation

before they can come into the Federation. My whole object is that the Federation should come into existence. I picture to myself, My Lord, a united India, united though divided—the States having full autonomy to manage their own affairs except in so far as they agree to delegate their power to the Federal Government, and at the same time standing together with British India shoulder to shoulder, and soul to soul, for the defence of the Motherland, and for the progress of the entire people who live in that land. I have the hope that that will be so. I cannot think of the India of the future as a land in which one-third of India, the States, with their population of twenty millions, will stand apart. That India will be a weak India. The strong and united India that I picture to myself—and I am sure that all my friends desire the same—will be an India in which the people of British India and of the Indian States will work together as patriots—in which the latter will combine allegiance to the Rulers of their own States with fidelity to our common Motherland—who will take their example from the Princes whom we have the pleasure of seeing before us, who have shown that they are patriots as well as Princes. I hope that the questions which have been pressed for the consideration of Their Highnesses will be viewed in that light

Now, My Lord, I want also to say that those of us who are impatient—and none can be more impatient, I will repeat, than myself—to see the principle of representative institutions introduced into the States, should remember . . . .

Dr. Ambedkar: May I point out, My Lord Chancellor, that we on this side have never said that representative institutions should be introduced into the States? All that we say is that there should be constituencies in the Indian States, similar to the constituencies in British India, for the election of the representatives to the Federal Assembly. I have never said that there should be popular assemblies in the Native States to control the Native States as a condition precedent to the entry of the Princes into the Federation

Pandit M. M. Malaviya: If Dr. Ambedkar thinks that he has not asked for representative institutions, I leave him to have that satisfaction. We should not think that, if members who will come to the Federal Assembly from the States will not be elected by some popular method, they will not be useful. We must remember that, even in England, it has taken a long time to arrive at the present suffrage. In England, before the Reform of 1832, less than 15,000 persons voted for the members of the House of Commons. We hope to progress much more rapidly and much more satisfactorily; but, even under that system of limited suffrage, some very capable Englishmen were elected to Parliament through some of the boroughs which were called "rotten boroughs," in which one man, so far as I remember, had eleven votes in his pocket. That was before 1832. I mention it, not as a plea for introducing a similar system, but to show that, even if the representatives of Indian States do not come by popular election—which, I again repeat, I desire

education give an excellent account of themselves, even, if I may say so, as my esteemed friend Dr. Ambedkar has given.

Dr. Ambedkar: I am still an "Untouchable" in society, although I am educated. Education has not raised me out of that.

Pandit M. M. Malaviya. I beg your pardon; you are not an Untouchable; you are a dear friend and colleague—a brother with whom your most orthodox friends have the pleasure to meet and work, and you know that they work together with you. To-day there are more Brahmins working in the cause of the Depressed Classes than the representatives of any other class. I think that is a fact which my friend, Dr. Ambedkar, will admit.

Now, the second point, My Lord, which I should like to touch upon is the question of direct and indirect election. I fear that the remarks which Mahatma Gandhi made yesterday in this connection were somewhat misunderstood. Mahatma Gandhi and the Congress are pledged to adult suffrage. The Congress swears by it, if I may say so. Mahatma Gandhi stands for it. What Mr. Gandhi said yesterday was not intended to detract in any way from his advocacy of adult suffrage, but to point out a way in which any practical difficulties which might be felt in introducing it might be overcome. I am sure, Sir, that the members of this Committee know that the Congress has long been advocating a most extensive franchise, and for some years past it has been advocating adult suffrage. It is not possible for the Congress to depart from that line. It is not possible for Mahatma Gandhi to depart from that line. When yesterday he spoke approvingly of Lord Peel's suggestion, the object, as I understood it, was to show that, if it was felt that there were practical difficulties in the way of extending the franchise to all the adults in the country—if the hugeness of the constituencies, if the great distances that would divide parts of the same constituencies and other similar considerations stood in the way of it—it was possible to find a way out by adopting the method that he suggested It was most certainly to introduce the principle of adult suffrage that Mr Gandhi suggested that plan. He has not approved the idea that an indirect method of election should be adopted whereby the people should feel that they were kept out of the right to vote

Sir Tej Bahadur Sapru: I listened with great attention and interest to Mahatma Gandhi's exposition of the principle of adult suffrage, but I am very much of the view that it is much lower than that recommended in the Nehru Report If I am wrong, will you please correct me?

Sir Samuel Hoare: Pandit Malaviya, it would still be direct election. You are now making an argument in favour of adult suffrage. That was not the subject to which the Committee was addressing itself yesterday, so I understand. That subject was the alternative of direct and indirect election; and, as I understood Mahatma Gandhi's speech, he was in favour of adult suffrage, but he was also in favour of indirect election.

that they should—even then we may have some excellent representatives whose co-operation will be very valuable in our work.

Chairman: Summing it up quite briefly, you say that "rotten boroughs" do not always return rotten members.

Pandit M. M. Malaviya: I thank Your Lordship. I wish I could imitate Your Lordship's epigrammatic way of putting things.

It should be obvious to everyone that the fact that the Indian States—the Rulers of Indian States—have with open eyes decided to accept an all-India Federation necessarily implies that the principle of representation will be introduced into those States. None of Their Highnesses can fail to see that, once they agree that their subjects should come as representatives of their States to the Federal Assembly, they will have to devise some scheme by which such representatives will be elected. It is only a matter of time. If some of them are able to introduce it before the new constitution comes into being—if they are able to announce the establishment of representative institutions in some of their States—I shall be delighted; but if they should not find themselves in a position to do so immediately, then my recommendation to my British Indian friends would be, let us show patience and courtesy, let us hope that such institutions will be established in proper time, but let us not do anything to create unnecessary obstacles in the way of the establishment of that all-India Federation upon which now, as matters stand, our hopes so much depend.

Dr. Ambedkar: That is the same advice that is given to the Depressed Classes—that their salvation will also come in time.

Pandit M. M. Malaviya: My Lord, my friend, Dr. Ambedkar, is entirely mistaken and, I am sorry to say, not so well informed as I thought he would be.

Dr. Ambedkar: I should like to be enlightened.

Pandit M. M. Malaviya: I am not saying that the Depressed Classes should wait. In a criticism of the Montagu-Chelmsford proposals which I had the honour to publish when the proposed reforms were first announced in 1918, I urged that, so far as the Depressed Classes were concerned, it is particularly a question of education, and I pleaded—and I still plead, and the Congress has pleaded—for universal primary education. It has pleaded all the years of its existence; and if the Government of India, which commanded all the resources of the country, had spent sufficient money on promoting primary education among the people, I am sure the words "Depressed Classes" would have been a matter of history by this time—long before this time. We have desired that they should receive elementary, primary education, that they should receive secondary education, that they should receive higher education. I have the honour to be the Vice-Chancellor of a University, the Benares Hindu University, and there a student of the Depressed Classes gets a seat exactly as a student of any other class does; there is absolutely no distinction. And those who have received

education give an excellent account of themselves, even, if I may say so, as my esteemed friend Dr. Ambedkar has given.

Dr. Ambedkar: I am still an "Untouchable" in society, although I am educated. Education has not raised me out of that.

Pandit M. M. Malaviya: I beg your pardon; you are not an Untouchable; you are a dear friend and colleague—a brother with whom your most orthodox friends have the pleasure to meet and work, and you know that they work together with you. To-day there are more Brahmins working in the cause of the Depressed Classes than the representatives of any other class. I think that is a fact which my friend, Dr. Ambedkar, will admit.

Now, the second point, My Lord, which I should like to touch upon is the question of direct and indirect election. I fear that the remarks which Mahatma Gandhi made yesterday in this connection were somewhat misunderstood. Mahatma Gandhi and the Congress are pledged to adult suffrage. The Congress swears by it, if I may say so. Mahatma Gandhi stands for it. What Mr. Gandhi said yesterday was not intended to detract in any way from his advocacy of adult suffrage, but to point out a way in which any practical difficulties which might be felt in introducing it might be overcome. I am sure, Sir, that the members of this Committee know that the Congress has long been advocating a most extensive franchise, and for some years past it has been advocating adult suffrage. It is not possible for the Congress to depart from that line. It is not possible for Mahatma Gandhi to depart from that line. When yesterday he spoke approvingly of Lord Peel's suggestion, the object, as I understood it, was to show that, if it was felt that there were practical difficulties in the way of extending the franchise to all the adults in the country—if the hugeness of the constituencies, if the great distances that would divide parts of the same constituencies and other similar considerations stood in the way of it—it was possible to find a way out by adopting the method that he suggested. It was most certainly to introduce the principle of adult suffrage that Mr. Gandhi suggested that plan. He has not approved the idea that an indirect method of election should be adopted whereby the people should feel that they were kept out of the right to vote.

Sir Tej Bahadur Sapru: I listened with great attention and interest to Mahatma Gandhi's exposition of the principle of adult suffrage, but I am very much of the view that it is much lower than that recommended in the Nehru Report. If I am wrong, will you please correct me?

Sir Samuel Hoare: Pandit Malaviya, it would still be direct election. You are now making an argument in favour of adult suffrage. That was not the subject to which the Committee was addressing itself yesterday, so I understand. That subject was the alternative of direct and indirect election; and, as I understood Mahatma Gandhi's speech, he was in favour of adult suffrage, but he was also in favour of indirect election.

Mr. Gandhi: Yes.

Pandit M. M. Malaviya: In order to help to establish adult suffrage.

Sir Samuel Hoare: Yes, exactly; but it is none the less indirect election.

Pandit M. M. Malaviya: That is quite right—to that extent it would be; but I hope, My Lord, that everybody will agree that what Mr. Gandhi said was meant to suggest a way out of the practical difficulties which might be felt, and not to abandon the idea of adult suffrage.

Lord Peel: That is what I was saying too. We are exactly together.

Mr. Iyengar: I am glad. Lord Peel is in favour of adult suffrage after all!

Pandit M. M. Malaviya: My Lord, I have not been able to follow Lord Peel entirely. I have felt that he did not approve of adult suffrage. He did not approve of even an extensive franchise.

Lord Peel: Well, I was not really discussing that point; I was not saying anything about adult suffrage at all yesterday.

Pandit M. M. Malaviya: Then I take it that Lord Peel is not opposed to adult suffrage! Indeed, it would be a matter of surprise if he were, because our British fellow-subjects have moved step by step towards adult suffrage. The whole history of the last hundred years proves it. They have moved from point to point from a very limited suffrage. The first large step they took was in 1832, then in 1868, then in 1880, then in 1917, and lastly in 1928. It would be a matter of surprise if Lord Peel, representing the British people, should suggest to us that we should follow a reverse process—that we should now go down to a much smaller electorate than exists in India to-day. We have an electorate which is larger than the electorates which existed in the earlier days in England, and our wish and prayer has been that the franchise should be extended, should be made adult franchise or brought as near to it as possible; and I will tell you, My Lord, the reason for it. I believe that Congressmen generally believe that the vote is a very powerful factor in raising the political status of those who exercise it. I myself believe that the three things essential for the uplift of my people are the universal vote, universal primary education, and universal conscription or the right to bear arms. If I can arm my people with the universal vote I shall have done a great deal to lift them up politically. I wish the proudest men in the country to have to go to the humblest of my people to ask for his vote or her vote, for I know what effect that has already had in my country.

I therefore request that this question should be considered from the point of view of the ultimate good of the people who will be affected by the vote. The method of indirect election may be adopted as a temporary expedient where the difficulties are great

in the way of adopting adult suffrage. There are other mea[ns] by which those difficulties can be solved. The number of membe[rs] of Parliament should be increased and the constituencies shoul[d] be made smaller than they are at present. But I hope that, in view of the politically elevating effect of the vote, universal suffrage will be kept as the goal before our minds, and that we shall try to approach it as far as possible even in the next instalment of reforms.

My Lord, my friend, Mr. Mudaliyar, in speaking of the Congress, fell into a mistake. He suffers from the fact that he has not had the honour of attending the Indian National Congress meetings for some time past; he is not, therefore, in touch with what happens there. He therefore does not know how the work of the Congress is done, My Lord. I claim that it is the most democratic body to-day in India and perhaps in any other country. It is not the personal influence of one man that decides questions there; all the members who desire to may take part in the discussions, and the results are arrived at after the fullest deliberation. To say that the decisions of the Congress evidence personal success rather than the success of democratic principle is to betray ignorance of what actually happens at the Congress.

My Lord, I wish to say one word about the question of Second Chambers too. Here again, we should not forget that we have a history of Reforms in India. We already have a Second Chamber, in the existing Constitution. When Mahatma Gandhi spoke yesterday, as I understood him, what he said was that he was not frightened by the idea of only one Chamber. That is very different from saying that he was opposed to the Second Chamber. In the Nehru Report, the Congress advocated a Second Chamber; and that is the prevailing view in the Congress, so far as I know, to-day. But Mahatma Gandhi made it clear that, if one Chamber commended itself to our people on the whole, that is not a matter which would frighten him or the Congress people, and that they would be able to consider that question fully on its merits. But, so far as the general opinion in the country is concerned, as I have been able to sense it, it is in favour of the establishment of a Second Chamber; and I submit, My Lord, it is very desirable at this stage of our progress, and in view of the situation in which we are placed, that it should be so. Sir Tej Bahadur Sapru reminds me that the Nehru Committee recommended that the Provincial Legislatures should be electorates for the Second Chamber. That is a matter which has to be gone into.

Dr. Ambedkar: That Report was abandoned by the Congress.

Pandit M. M. Malaviya: No, it was not abandoned. It was not pressed, because there were differences; but whatever sound propositions have been embodied in it have not lost their value because it was not accepted all round. My Lord, in view of the fact that we are now discussing a federation of all-India, I submit that the question of a Second Chamber has become all the more important, and I think there should be a general agreement in

regard to this question. In his very valuable book on "Second Chambers", Sir John Marriott, after discussing the constitutions of most countries, says:—

> "One conclusion emerges, on the threshhold, irresistibly: that no important State, whatever be its form and government, whether federal or unitary, monarchical or republican, presidential or parliamentary, constitutionally flexible or contitutionally rigid, is willing to dispense with a Second Chamber. Of Sovereign States only Turkey, Jugo-Slavia, Esthonia, Latvia, Lithuania, and Bulgaria adhere to the unicameral system. States which are component parts of a Federal State are, on the contrary, frequently unicameral. Some of the Canadian Provinces are in this category, but they are not 'States', and, though extensive in area, contain as yet small populations."

Then he says:—

> "The preceding pages disclose the fact that, of the great States of the modern world, three of the greatest have actually tried and abandoned the experiment of a single legislative Chamber."

I submit, therefore, that there is a large body of opinion in favour of the constitution of a second Chamber.

My Lord, I do not wish to take up more time at present. I only repeat the hope that some method may be devised by which questions which are of primary and outstanding importance may be taken in hand at an early stage, and that these other questions may come later on.

Colonel Haksar: Lord Chancellor, I much wish I could avoid impeding the progress of our work, but much that has been said during the last three days impels me to intervene even at this late stage of the debate. I am led to take this course from a sense of responsibility, which, in addition to being general, as a member of the Indian States Delegation, is also particular. I feel sure, Lord Chancellor, that if His Highness The Maharaja of Kashmir had found it possible to come, he would have been amongst the newly added members of this Committee. I therefore speak from the general point of view of the States as well as from the particular point of view of the Kashmir State—than which, I venture to think, there is no more important unit of the Indian polity. Kashmir to-day guards, and, if the Federal Government is formed, will continue to guard an important and extensive section of the Indian Frontier. From that point of view, I should think the attitude of the Kashmir State towards the problem which we are all endeavouring to solve is worthy of careful consideration.

Lord Chancellor, my endeavour is going to be to deal with the practical, as distinguished from the theoretical aspects of our problem; and I am happy to think that what I regard as the

practical aspects, have been found by several speakers, who have preceded me, to be also practicable.

I shall first attempt to answer some of the questions grouped under Head 2; and having done that, I shall try to justify those answers and to elucidate the reasons which have determined the general attitude of the Indian States Delegation. The first sub-head under Head 2 relates to the method of selection of representatives for each Chamber of the Federal Legislature by individual, as well as by groups of, States. The view has, I think, found as much support as opposition that, at any rate for the purpose of the Upper Chamber, the method applied should be nomination. Now, so far as regards the States that in terms of population, area and revenue are large enough individually to return representatives to the Upper House, there is no difficulty about the nomination of their representatives by their Governments. When, however, we come to the other class of States that will have to be grouped for purposes of representation, there at once arises the question of the basis of eligibility; *i.e.*, what strength of population, or what extent of territorial area, what amount of revenue, or a combination of all these three factors, will entitle to representation. This question does not directly arise under the Head I am discussing, yet it is necessary to draw attention to the fact that the basis of eligibility will have to be determined before grouping can be effected.

Your groups would have to be based upon what you determined to be . . . .

Chairman: The number?

Colonel Haksar: Not so much the number as the population of the people in the group that would qualify them to represent you, or the area, or the revenue, or all those factors together When the grouping has been effected, the various groups will naturally constitute electoral colleges Again, the grouping can only be suitably effected if the total number of seats to be accorded to the States is determined. In so far as each group will probably nominate only one representative, it has therefore to be appreciated that the selection of one representative will involve, perhaps necessarily, a process akin to election. I think the final selection will necessitate preceding selections by each member of the group; and from amongst the various persons thus selected there will have to be found ultimately one person, probably by election. I cannot say with any confidence that the method recommended or suggested would be as I have indicated; but, if it is, the process I have indicated should go some way towards salving the doctrinaire's conscience, even though the electors involved in this process were originally nominees of the individual States forming the group.

I am not at this stage concerned with formulating replies to every one of the questions which occur under Head 2. I am more concerned with examining from the practical point of view some of the opinions which have been expressed. I shall first

deal with the claim as regards the reservation of seats. The question does not arise here; but, as it was raised in one of the speeches, it is difficult to pass over the point. The reservation of a proportion of the seats as compared with the total strength of each Chamber has been claimed. In regard to this claim, Lord Chancellor, I venture to submit that it extends beyond its legitimate confines a problem which is essentially parochial. If I may be permitted to be frank, it is calculated to introduce into harmonious politics elements which must conduce to disharmony, discord and an infinite variety of resulting evils. Assuming that the claim was not intended to operate as I have envisaged, then its operation would manifestly be unfair in its own legitimate sphere; but that, of course, is not quite my concern. Then there is the practical aspect of the problem. I suggest that, so long as there are States which will have to be grouped for purposes of representation in both Houses, you have merely got to visualise the difficulty of securing the proportion of the total strength of each Chamber asked for to realise that it would be impracticable to give effect to the claim.

At this stage I should like to quote one sentence from a speech in which occurs the point which I have been discussing, in order to demonstrate its impracticability. That sentence reads as follows:—

> "I need not remind Sir Tej Bahadur Sapru that, although certain things are very desirable in certain directions, limits and exceptions have, at least for the time, to be made with regard to certain matters."

I ventured to remark that the idea of representation in the Upper Chamber by nomination has received as much support as opposition. In regard to the Lower Chamber, the balance of opinion seems to be in favour of the elective principle. The gist of the argument employed in support of this opinion is that the Lower House should be a popular, or to use the exact word, a national Chamber. While insisting on the principle formulated, there has been evidence of a very friendly disposition towards the States, in recognition probably of the impracticability of the immediate enforcement of the principle. Some speakers, in order to make the task of the States easy, have expressed their willingness to permit a duration of time within which the principle should be introduced. Nevertheless it is insisted that the principle shall ultimately apply; and this view is supported by the fundamental maxim that there should be no taxation without representation. I should like to examine this position from a practical point of view here and now. First of all, it seems to me that the problem has been viewed not in relation to the entire content of the Federal scheme as it emerges from the Appendix of the Second Report of our sub-Committee, but in relation only to one element of that scheme, namely taxation. Apart from that, however, I think it is necessary for me to suggest that, so far as the majority of the subjects that are proposed to be wholly or partly federalised

are concerned, the fortunes of the country would not be seriously affected by the character of the representatives of the Federal units who would be called upon to discuss the questions that come before them in the Federal Legislature. Those fortunes would not be bettered if the representatives had been elected by a popular vote, nor worsened if they had been nominated by the Governments of the federating units. I submit—and I honestly myself subscribe to the plea—that this is not the occasion for scoring debating points; but honestly, though I anxiously desire to eschew flippancy I should like to ask the question whether the opinion expressed or the votes recorded by the representatives of the States are likely to be different, whether those representatives have been elected by the subjects of the States or nominated by their Governments, in regard to question relating to Aircraft, Shipping and Navigation, Lighthouses, Ports and Quarantine, Federal Audit, Commerce, Stores and Stationery, Geological Survey, Botanical Survey, Inventions and Designs, Copyright, Survey of India, Meteorology, Census, Statistics, Immovable Property in possession of the Governor-General in Council, etc., etc.

Mr. Iyengar: If there is going to be no difference of interest, why not agree to it?

Colonel Haksar: I am dealing with the point of whether there is any conflict of interest between the subjects and Rulers of the States, and I repeat that the question of the method of representation has been viewed less from the standpoint of the content of our Federal scheme than from that of accepted constitutional principle. It has been urged that

> " there is no conflict of interests between the Rulers and their own subjects where Federal burdens, for instance, are imposed for the administration of Federal subjects by those in charge of Federal administration."

Yet it seems to me that the reason for insisting upon the elective principle is merely that it is assumed that the interests of the subject and the Ruler clash, and that consequently the nominee of the Ruler would act against the interests of the subject.

Mr. Joshi: We do not assume that; that is your assumption.

Colonel Haksar: What is it, then, that is assumed? Once it is admitted that there is no clash between the interests of Ruler and subject, what difference does it make whether the person sitting in the Upper or Lower House is elected by the people or nominated by the Ruler? Once you admit there is no clash of interest, it makes no difference whether the Ruler nominates the representative or the people elect him.

Mr. Joshi: We make no assumption.

Colonel Haksar: Do you make the assumption that there is a clash of interest between Ruler and subject?

Mr. Joshi: It may come.

Colonel Haksar: I should like to say a few words, but only a few words, about another point—another angle of vision, another school of thought. If I do so, it is to point to the fact that, while the ardour for democratic principles is shared by many of us, that ardour sometimes leads us to suggestions that are somewhat out of the common. Your Lordship will recall a suggestion that representation in the future legislative organ should be according to what were tersely described as economic classes, and that it should be in accordance with the numerical strength of these classes. I could wish that the point had been further developed, not merely by definition, not from illustration of the economic classes, but also by the statement that the numerical strength of a particular class would make it eligible for representation. The school of thought that favours the construction of the legislative structure on the foundation of economic classes also prefers a unicameral to a bicameral Legislature; and this view has received support from a very important quarter. Here again, My Lord, one wishes that the idea had been developed, because it is impossible to believe it to be intended that the best brains in the country should not come together to co-operate in its administration for the purpose of its development. What I imply is that, if there is to be one Chamber only, people who are likely to sit in the contemplated Upper House would probably not get a look in if only because of their incapacity to stand the electioneering racket. But while the idea of a single Chamber receives support from a very important quarter, from the same quarter we have the expression of opinion that, so far as the States are concerned, how they would select their representatives should be left to them. That opinion was expressed in a very important quarter, and I have no doubt that the importance of that quarter is fully recognised.

With reference to the States, it was remarked that, in so far as they have agreed to come into the Federation, it is not open to them to claim that their view as to the method of returning their representatives to the Legislature should receive so much as consideration. While every assurance was given that there was no desire on the part of British India to interfere in the internal affairs of the States in an illegitimate manner, that desire is perfectly consistent with the exercise of legitimate interference. In other words, in so far as the States have agreed to join Federation, and Federation is to be about matters of common concern, the question of the method of returning representatives to the Legislature is also of common concern. My Lord, I would only observe that this argument would apply when Federation is formed. It does not apply before it is formed.

Concerning the entry of the States into Federation, one speaker was perturbed at the thought that there was a danger of the Indian Federation turning out a " mammoth " one, if each State is represented in that Federation; and, as he considered this unthinkable, he feared that, in the alternative, some States would be left out in the cold; and this would be inconsistent with the ideal we have

set before ourselves that, in this new constitution, every area should be represented. My Lord, I submit that, so long as the idea of grouping is there, the "mammoth" will not be exhumed from the geological strata; and I would add that this idea of grouping also eliminates the possibility of any State being confined to the frigidarium. The only question that remains is that the groups would have to be large enough in terms of population, and possibly also of area and revenue—but population is the vital factor as States exist to regulate the lives of the people—to be eligible for representation; and Your Lordship will recall that I raised this question of eligibility at the very beginning of my remarks.

I feel that I have not yet entirely met the speaker's point of view. He drew attention to known Federal States and suggested that the largest number of States constituting a Federation is 48, in the United States of America. This, if I may be permitted to say so, is rather in the nature of a *non sequitur*. The implication would almost seem to be that known standards should not be transgressed, and, therefore, possibly the number of federating units in India should not exceed 48.

Dr. Ambedkar: I did not say anything of the sort.

Colonel Haksar: My Lord, need I repeat the oft repeated statement that the conditions existing in India have no parallel? It has been generally agreed that by federation alone can India become one country for the purpose of matters which are common to the whole country and obtain what it desires, namely, responsible self-government. Therefore it appaers to me to follow that the creation of the Federal State is the paramount consideration, and that object should be maintained at any cost. It also follows that the Indian Federal State in its composition must be the natural product of subsisting conditions in India. The differences in the component elements of the Australian, Swiss, and Canadian States, of the United States of America, and, indeed, of the Old German and Austrian Empires, resulting from the conditions peculiar to these countries, are an argument—and I venture to submit a conclusive argument—in favour of constituting the Indian Federal State in accordance with the peculiar conditions of India.

My Lord, may I at this stage stray from the point that I am immediately discussing, to say that these remarks of mine apply also to other factors of our problem, and more particularly to the question of the method of representation? I have to make this observation here because of the insistence on the elective principle, even in the Upper House. It would appear that the States in claiming to nominate their representatives were suggesting a method unknown to federal constitutions. Indeed, it was boldly asserted that the old German Empire was the only example of a Federation in which the Governments of the States nominated their representatives. My Lord. I speak with great diffidence in the presence of so many eminent constitutional lawyers, but am I very much mistaken in saying that, in the senior Dominion in the British Empire, Canada, the Governor-General nominates for

life all the 72 members who compose the Senate? May I also say that our future Federal Upper House would have far greater latitude in the expression of opinion than had the German Bundesrat, where the Ambassadors spoke to definite instructions.

My Lord, here I must correct what I can but regard as a misconception. It was agreed that the States should be in the Federal Executive; but it is argued that, so long as the representatives of the States came into the Legislature by nomination, the essence of collective responsibility will be destroyed. This too seems to me *non sequitur*. The comment offered by the speaker results from the apprehension that the members of the Executive will be subject to "divided mandates". My Lord, in the case of representatives of the States in the Legislature, I deny that their representatives would discuss or vote according to instructions. But, in the case of people from the States who would find seats in the Executive, there can be no question of mandate, if only because those men would not be serving officials of the States; and I think it was made clear last year that, not servants, but people who had experience of States would be members of the Executive.

Dr. Ambedkar: Why by nomination?

Colonel Haksar: In my opinion, becaue you concede the right to nominate; and it is understood that the people nominated would not be the officers serving the State. It is obvious that they would be people who know the States from the inside, but not people necessarily open to receive mandates from the States. That is where the misconception comes in. I think that the idea of nominating the representatives has been interpreted to imply that those people who eventually come into the Executive would necessarily be servants of the State. That is not what I conceive the position to be. Whereas those who sit in the Upper House may be Ministers and may be servants of the State, it does not necessarily follow that those who are members of the Executive are also servants of the States.

My Lord, I might discuss at this stage the practicability of the new scheme which you endeavoured yesterday to interpret to us with an accuracy commensurate with your grasp of the scheme; but, on second thoughts, I think they were right who felt that you were not sponsoring the scheme, and therefore the time to discuss it would be when the author is present. Therefore I pass on from confederation to notice one or two other points that also arise from the views that have been expounded.

One of the points with regard to which I would like to offer a few observations is the apprehension that, if people who are drawn from the States and intended to represent the point of view of the States, but not necessarily representatives of the States, are in the Executive, British Indian politics are bound to have repercussions on the domestic policy of the Indian States. If the idea behind the apprehension be that in the result the States would be embarrassed, I must admit that it is a most generous thought;

but it might be left to the States to face this risk, if they are willing to do so.

Then I desire to make quite clear, as I have, I think, said before, that the people who will be members of the Executive will not be officers serving in the States. The other aspect of the question is, as was admitted by another speaker, that if the States are only represented in the Legislature, where policies will be conceived and initiated, they might as well not enter the Federation. The objection really seems to be that, so long as there remain any Central subjects which are not Federal, with which the Executive common to British India and the States will deal, the presence of people whose outlook on public affairs is not bounded by a limited horizon, might lead to conclusions which would be wholly different from those which might be reached in their absence. Now, I should have thought that, the broader the point of approach to any question of public policy, the greater guarantee there was of a sound solution; and therefore I have not been able to appreciate that point of view because I have said that, once it is guaranteed that the representatives—quite inaccurately called representatives of the States—are members of the unity, their presence would lead to nothing else but a conclusion and a decision which is for the good of the whole country; because it is obvious that, under the new constitution, the matters that will be discussed in the Executive would not be Provincial matters—for the Provinces would have full autonomy—they would not be matters relating to groups of Provinces. They would be matters relating to the whole of the country; and therefore, if you bring to bear upon those questions the points of view of the different parts of the country, you only ensure sound conclusions.

I do not think that I need go on further. I would merely echo the words of our esteemed friend, Pandit Malaviya. If I might summarise what he said in that portion of his speech it was this: The paramount consideration is to create a State in India in which no part will stand outside that State. The paramount consideration is to unite the country. If that be the paramount consideration, I say that that object should be achieved at all costs, and that nothing should be allowed to come in the way of the attainment of that object.

Dr. Ambedkar: Not at all costs—not at our cost!

(The Committee adjourned at 1-15 p.m.)

PROCEEDINGS OF THE TWENTY-SIXTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON THE 21ST SEPTEMBER, 1931, AT 11-30 A.M.

atement by the Secretary of State for India regarding the Suspension of Gold Payments in the United Kingdom.

Sir Samuel Hoare: Lord Chancellor, You are a very consi- ate Chairman, and on that account I venture to ask you to let

me, in the course of two or three minutes, make a short statement that, whilst it does not concern directly the detailed subjects we are going to discuss this morning, none the less deals with a question which, I am sure, is in the mind of every member of this Committee this morning.

I cannot help thinking that you gentlemen will expect me to refer in a few sentences to the announcement made this morning regarding the suspension of gold payments in this country. For sterling to be divorced, even though only temporarily, from gold, is an event of international significance and I have no wish to minimise its importance, not only from the point of view of this country, but also from that of those whose currencies are to a greater or less degree linked with sterling. It was to avert such a happening that the National Government was formed; and all its efforts, of which the first fruits were the balancing of the Budget, have been directed to re-establishing confidence in British finance and British currency.

There is no question that our system of national finance is as sound and honest as any in the world, and that the inherent wealth and productive power of the Nation are almost limitless. Indeed, the way had already been paved for the revival of confidence in this country when a crisis broke upon us, precipitated by the action not of British citizens but of foreigners, nervous as to the conditions in their own countries and ignorant of the true position of Great Britain. For a temporary period, therefore, this country will be obliged to protect itself in the manner that has been announced this morning.

The case must, however, be viewed in its true proportions. At a moment when almost every other country is faced with a large deficit, Great Britain is now balancing its Budget; the most crushing burdens are being willingly shouldered by the tax-payer and drastic retrenchments are being made in all possible directions. Unemployment finance has been overhauled and borrowing for this purpose has been ended. The basis for stability has thus been laid and the foundations necessary for the full restoration of confidence have, I believe, been firmly secured. His Majesty's Government are convinced that at this moment the British people will remain as steady as a rock and that they will show their faith in their own currency, standing by it in the knowledge that the whole effort of the Government will be directed to the restoration of stability.

Gentlemen, you will be looking to me to add a few words in particular on the bearing of these events on India. I feel a special responsibility in this crisis for India. Since the fixing of the rupee by Statute at 1*s*. 6*d*., sterling has until to-day been synonymous with gold, and for all practical purposes the stability of the Indian Exchange has been based on sterling. Indian trade is financed through sterling. The greater part of India's external obligations is in terms of sterling. To follow gold, and so to increase the sterling value of the rupee at this juncture is, I am sure you will agree, out of the question. It has therefore been

decided to maintain the present currency standard on a sterling basis. I am satisfied that this is the right course for India and is the most conducive to Indian interests. The Government of India will accordingly continue the policy under which stability in terms of sterling has in the past been secured. Lord Willingdon has already announced that India must regard it as her immediate duty to devise means to weather the economic hurricane, and has declared that the Government of India is determined to maintain the principles of sound finance that India has always followed.

To those among you, expert in Indian finance and able to influence opinion, I would venture to address these words. There has been evidence for some time of a desire to convert rupees into sterling. The uncertain prospects of such action are illustrated by what has just taken place. Patriotic Indians, however, and all who are zealous for India's well-being and constitutional progress, must realise the importance of maintaining the stability of the currency. They can help by standing by the rupee themselves, and by urging their friends to stand by the rupee as well. A break in the Rupee Exchange, on which the structure of Indian finance is built, would create a financial and economic crisis of the first magnitude, the consequences of which, in these days of crisis, it is impossible to foresee.

His Majesty's Government are determined to use every means in their power to prevent such a calamity. I appeal to you, a most distinguished assembly of Indians representing almost every Indian interest—Princes and politicians, Hindus, Muslims, Sikhs, Minorities—to throw your great influence into the scales for courage, stability and determination at a moment of national trial.

Gentlemen, I am much obliged to you for allowing me to make this statement.

Head 3.

Relations between the two Chambers of the Federal Legislature.

The following points for discussion in connection with this Head were drafted by the Chairman:—

(i) *Is the constitution to provide that normally, though subject no doubt to any requirements to the contrary necessitated by safeguards, the governing principle with regard to legislation is to be that the assent of both Chambers is required to the enactment of a Bill?*

(ii) *If so, which of the two following possible alternatives shall be taken as the basis of the relationship between the two Chambers:—*

(a) *that the powers and functions of both Chambers shall be approximately equal;*

me, in the course of two or three minutes, make a short statement that, whilst it does not concern directly the detailed subjects we are going to discuss this morning, none the less deals with a question which, I am sure, is in the mind of every member of this Committee this morning.

I cannot help thinking that you gentlemen will expect me to refer in a few sentences to the announcement made this morning regarding the suspension of gold payments in this country. For sterling to be divorced, even though only temporarily, from gold, is an event of international significance and I have no wish to minimise its importance, not only from the point of view of this country, but also from that of those whose currencies are to a greater or less degree linked with sterling. It was to avert such a happening that the National Government was formed; and all its efforts, of which the first fruits were the balancing of the Budget, have been directed to re-establishing confidence in British finance and British currency.

There is no question that our system of national finance is as sound and honest as any in the world, and that the inherent wealth and productive power of the Nation are almost limitless. Indeed, the way had already been paved for the revival of confidence in this country when a crisis broke upon us, precipitated by the action not of British citizens but of foreigners, nervous as to the conditions in their own countries and ignorant of the true position of Great Britain. For a temporary period, therefore, this country will be obliged to protect itself in the manner that has been announced this morning.

The case must, however, be viewed in its true proportions. At a moment when almost every other country is faced with a large deficit, Great Britain is now balancing its Budget; the most crushing burdens are being willingly shouldered by the tax-payer and drastic retrenchments are being made in all possible directions. Unemployment finance has been overhauled and borrowing for this purpose has been ended. The basis for stability has thus been laid and the foundations necessary for the full restoration of confidence have, I believe, been firmly secured. His Majesty's Government are convinced that at this moment the British people will remain as steady as a rock and that they will show their faith in their own currency, standing by it in the knowledge that the whole effort of the Government will be directed to the restoration of stability.

Gentlemen, you will be looking to me to add a few words in particular on the bearing of these events on India. I feel a special responsibility in this crisis for India. Since the fixing of the rupee by Statute at 1*s*. 6*d*., sterling has until to-day been synonymous with gold, and for all practical purposes the stability of the Indian Exchange has been based on sterling. Indian trade is financed through sterling. The greater part of India's external obligations is in terms of sterling. To follow gold, and so to increase the sterling value of the rupee at this juncture is, I am sure you will agree, out of the question. It has therefore been

decided to maintain the present currency standard on a sterling basis. I am satisfied that this is the right course for India and is the most conducive to Indian interests. The Government of India will accordingly continue the policy under which stability in terms of sterling has in the past been secured. Lord Willingdon has already announced that India must regard it as her immediate duty to devise means to weather the economic hurricane, and has declared that the Government of India is determined to maintain the principles of sound finance that India has always followed.

To those among you, expert in Indian finance and able to influence opinion, I would venture to address these words. There has been evidence for some time of a desire to convert rupees into *sterling. The uncertain prospects of such action are illustrated* by what has just taken place. Patriotic Indians, however, and all who are zealous for India's well-being and constitutional progress, must realise the importance of maintaining the stability of the currency. They can help by standing by the rupee themselves, *and by urging their friends to stand by the rupee as well.* A break in the Rupee Exchange, on which the structure of Indian finance is built, would create a financial and economic crisis of the first magnitude, the consequences of which, in these days of crisis, it is impossible to foresee.

His Majesty's Government are determined to use every means in their power to prevent such a calamity. I appeal to you, a most distinguished assembly of Indians representing almost every Indian interest—Princes and politicians, Hindus, Muslims, Sikhs, Minorities—to throw your great influence into the scales for courage, stability and determination at a moment of national trial.

Gentlemen, I am much obliged to you for allowing me to make this statement.

HEAD 3.

RELATIONS BETWEEN THE TWO CHAMBERS OF THE FEDERAL LEGISLATURE.

The following points for discussion in connection with this Head were drafted by the Chairman:—

(i) *Is the constitution to provide that normally, though subject no doubt to any requirements to the contrary necessitated by safeguards, the governing principle with regard to legislation is to be that the assent of both Chambers is required to the enactment of a Bill?*

(ii) *If so, which of the two following possible alternatives shall be taken as the basis of the relationship between the two Chambers:—*

(a) *that the powers and functions of both Chambers shall be approximately equal;*

(b) *that the decisions of one Chamber shall prevail over those of the other—or possibly that in some matters, e.g., finance, the right of decision shall vest in one Chamber only?*

(iii) *If the deciding voice is to be vested* by the constitution *in one Chamber, in which of the two Chambers is it to be vested, and on what principles is the decision so to provide determined, having regard to the composition and method of election of each?*

(iv) *If it is to be decided that the governing principle is to be equality of powers, shall the constitution provide—*

(a) *that all Bills, including Money Bills, can be introduced in, and amended by, either Chamber;*

(b) *that the function of voting Supply shall be shared by both Chambers—presumably sitting in Joint Session, since independent amendment of Demands for Grants by each Chamber would be likely to lead to complications and confusion;*

(c) *that differences between the two Chambers, which prove incapable of reconciliation by the ordinary methods of "reference back", should be finally resolved (subject to any necessary provisions connected with Safeguards) by a majority vote of the Members present and voting at a Joint Session;*

(d) *that a Joint Session shall be composed—*

(i) *of all the Members of both Chambers, or*

(ii) *of an equal number of representatives of each?*

(v) *Shall the decision whether or not to summon a Joint Session in any given case rest with the Governor-General; and, consequently, shall it be a matter for the Government's discretion in each case to determine—*

(a) *whether resort should be had to Joint Session to resolve a difference, or*

(b *whether the ordinary principle indicated under Point* (i) *of this Head should be allowed to operate, with the consequence that the Bill in dispute would lapse?*

(vi) *Shall provision be made for the elapse normally of an interval before the calling of a Joint Session? If such provision were made as the general rule, shall special provision be made for the possibility in suitable cases of decision by Joint Session forthwith,* e.g., *in the case of the Annual Finance Bill, or in other cases of emergency?*

Sir Muhammad Shafi: Though I come from what has often been described as a custom-ridden Province, I propose this morning to depart from the custom—followed last week by almost every speaker—of indulging in preliminary dissertations when expressing opinions even on specific points such as those embodied in the

questionnaire which Your Lordship has circulated to us. Some of these dissertations were, no doubt, eloquent and instructive; but, if I may venture to say, so, we have reached a stage in our deliberations when the adoption of what I might call business methods would expedite the conclusion of the task upon which we are engaged at this moment. This much, however, it is necessary for me to say—that the opinions which I am about to express are the result of prolonged discussion among the members of the group I have the honour to represent, of intimate knowledge of the social and political conditions obtaining in India, of practical experience, extending over a period of ten years or more, of the working of the existing constitutional machinery in our country, and of careful study of the relevant provisions embodied in the various Dominion Constitutions and of the two post-war Federal Constitutions of Germany and Austria.

Our answer to the first question under this Head is that the constitution should provide that normally, though subject, no doubt, to any requirements to the contrary necessitated by the Safeguards, the governing principle with regard to legislation is to be that he assent of both Chambers is required to the enactment of a Bill. I propose to summarise briefly the reasons for which we have come to that conclusion. On Friday last, my learned friend, Pandit Malaviya, read to us two extracts from Sir John Marriott's valuable work on "Second Chambers". In the first of those two extracts that learned author observes as follows:—

> "One conclusion emerges, on the threshhold, irresistibly: that no important State, whatever be its form and government, whether federal or unitary, monarchical or republican, presidential or paraliamentary, constitutionally flexible or constitutionally rigid, is willing to dispense with a Second Chamber."

In this connection it is worthy of note to observe that, not only in all the big states the constitutional machinery includes a bicameral Legislature, but in all great countries, except Russia, which have a federal constitution, a bicameral Legislature is an integral part of the constitutional machinery. This particular fact is full of significance for us, for what we intend to bring into existence in India is a Federal Legislature. It is thus clear that the teaching of history, as well as of world experience, points to the necessity and utility of including a bicameral Legislature as an integral portion of the future Indian Constitution.

But, My Lord, what about our own practical experience in India? Members of this Committee are aware that a bicameral Legislature is an integral part of the Montagu-Chelmsford Constitution, and has been in actual working for the last ten years or more. As I ventured to state the other day, for three and a half years I myself was Leader of the Council of State; and ever since the severance of my direct connection with the Council of State I have very naturally been a close student of the working of our central legislative machinery in India. As a result of that first-

hand experience, as well as of close observation, I had no hesitation in saying that the Council of State has exercised a steadying influence on the working of our legislative machinery which has been of the highest service to the people of India. One illustration alone I propose to give to this Committee to-day of the stabilising influence of the Council of State on the working of our legislative machinery. It is, I have no doubt, within the knowledge of all the members of this Committee that, when the Montagu-Chelmsford Reforms were introduced in India, the Congress decided to boycott the new Constitution, as a result of which no representatives of the Congress sought entry, either into the Legislative Assembly or the Council of State, in 1920-21. But subsequently, after the lapse of two years—I think in 1923—what was then known as the Swarajist Party in the National Congress, decided to enter the Central Legislature, and obtained a decision from the Congress itself, permitting them to seek election at the following General Election. The result was that, in the second Legislative Assembly, the largest group was that of the Swarajist Party. This Swarajist Party came into the Legislative Council with the professed object of non-co-operating from within; and, but for the stabilising effect of the action taken by the Council of State, I have no doubt that they would have succeeded in smashing up the Legislative Assembly if a unicameral Legislature had been a feature of the Montagu-Chelmsford Reforms. Can we say for certain that, if a single Chamber were to be a feature of the new constitution, such a state of affairs would not arise in the future? We are all aware that the Left Wing of the Congress Party consists of advocates of complete independence, some of whom openly profess communistic beliefs, led by a very sincere, very conscientious, but very enthusiastic professed Communist. May it not be that, if a single Chamber forms an integral part of our new constitution, a similar catastrophic crisis may arise in the future when, in that single Chamber, this section of our Indian politicians may occupy the same position as the Swarajist Party did in the second Legislative Assembly, with the result that the whole of our constitution might be destroyed as a result of their action? This is a very grave problem to which I earnestly invite the attention of the Committee; and I ask the Committee not to be led away by any assurances that may be given now by any advocate of a single Chamber as to what is or is not likely to happen in the future. We must guard against all eventualities; and practical experience of the working of our existing constitution in the past makes it necessary for us to halt and seriously to consider whether, in a country like India, with the forces actually in operation, it should not be a matter of the gravest concern to all sincere well-wishers of the country's peaceful constitutional progress to avoid bringing into our constitutional machinery a new feature, non-existent hitherto, and therefore depriving ourselves, not only of the advantages and benefits of continuity—which, after all, is not a matter to be lightly put aside—but also laying ourselves open to very grave dangers. I

submit, therefore, that our past experience also points to the necessity, as well as the utility, of introducing or re-enacting either the same or similar provisions as are embodied in the Government of India Act, of 1919, relating to a bicameral Legislature.

My learned friend, Pandit Malaviya, told us—and if I may venture to say so, quite correctly—that not only the Congress but all schools of thought in India are unanimous in holding the opinion that a bicameral Legislature should form an integral portion of our constitutional machinery. This being the teaching of history, this being the result of ten years' practical experience of the working of our existing constitutional machinery, this being the unanimous opinion entertained by all schools of political thought in India, I confess I was somewhat surprised when I heard from the lips of Mahatma Gandhi—for whose sincerity and high idealism I entertain the greatest respect—the views which he expressed on Thursday last in favour of a single Chamber based upon an indirect electorate. I entirely agree with my friend, Diwan Bahadur Ramaswami Mudaliyar, that the scheme of a unicameral Legislature based upon indirect election, sketched out to us by our respected Mahatma, is calculated to lead not to the coming into existence in India of a really representative Government but of dictatorship. When I went home and received the full report of Mahatmaji's speech, I carefully studied those portions of that memorable pronouncement which related to these two points. Knowing that, for many of his ideas, Mahatmaji derives inspiration from Tolstoy, it occurred to me to examine the provisions of the Russian Federal Soviet Republican Constitution, to see if there was any resemblance between the scheme sketched out by Mahatmaji in his speech and the provisions of the Russian Constitution. I found a very strange similarity between the scheme sketched out by Mahatmaji and the position as it exists in the Russian Soviet Republic. I am sorry Lord Peel is not present here this morning, for I should like to have him here to listen to one short sentence that I am going to utter now. Mahatmaji was very pleased to find himself in the same boat as Lord Peel. I wonder if Lord Peel too derived his inspiration and got his ideas from Lenin!

It is clear, therefore, that from every point of view it is essential, in the interests of India and of the people of India, that a bicameral Legislature should form an integral part of our constitution. Once that principle is conceded, I venture to submit that it *ipso facto* follows that, ordinarily speaking, in matters of legislation the assent of both Houses should be regarded as essential. I venture to submit that an emasculated Upper House would be an utterly useless luxury and would not serve the purpose for which an Upper House ought to exist for it would then have no steadying or stabilising effect over the whims and idiosyncrasies of the Lower House, should occasion call for it.

Not only is a bicameral Legislature an integral part of our existing constitutional machinery, and therefore, for the purposes of continuity as well as upon general principles, these or similar

Sir Muhammad Shafi: The Governor-General must summon—shall summon—the Joint Session.

Dr. Ambedkar: Why should the Governor-General take personal interest in the legislation that is before the two Houses?

Sir Muhammad Shafi: It is not a question of personal interest. It is the machinery or the initiative to be taken.

Dr. Ambedkar: It is a matter for the two Houses. Why should the Governor-General be drawn into it?

Sir Muhammad Shafi: We think that, when a difference of opinion has arisen, the logical step resulting from it is a Joint Session of the two Houses, and we think that a Joint Session of the two Houses must be called in those circumstances, and the Bill should not be allowed to lapse; and we would make it obligatory on the part of the Governor-General to call a Joint Session.

Then sub-clause (*d*) of sub-head (iv) runs as follows:—

> " that a Joint Session shall be composed—(i) of all the Members of both Chambers, *or* (ii) of an equal number of representatives of each?"

We are of opinion that the Joint Session should be composed of all the Members of both Chambers, so that both Chambers may have a full share in the final decision which is to be arrived at as a result of the Joint Session.

The last question, question (vi), runs as follows:—

> " Shall provision be made for the elapse normally of an interval before the calling of a Joint Session?"

Our reply to this part of the question is in the affirmative.

> " If such provision were made as the general rule, shall special provision be made for the possibility in suitable cases of decision by Joint Session forthwith, *e.g.*, in the case of the Annual Finance Bill, or in other cases of emergency?"

Here again our answer is in the affirmative, and it is not necessary to give any reasons in support of that answer. It is obvious that the Annual Finance Bill must come into operation on the 1st April every year, and in consequence it is really a case of emergency, just as much as any other case of emergency; and to meet all cases of emergency there should be special provision making it possible, in suitable cases, for a Joint Session to be called at once.

These are our answers to all the questions which you have put to us, My Lord Chancellor.

Mr. Joshi: May I raise one point here? Would Sir Muhammad Shafi say that in all cases of emergency the Governor-General must call a Joint Session?

Sir Muhammad Shafi: Yes.

Excuse me for one moment. You put to us a supplementary question, not embodied in these questions, which I forget to answer.

You asked us if specific provisions regarding the relative supremacy of the two Chambers or the equality of their powers should be embodied in the constitution, or whether things should be left to work themselves out in the process of time. Our answer to that is that we want to see specific provisions embodied in the Act.

Sir Maneckjee Dadabhoy: My Lord, My task has been very much simplified by the speech made by my friend, Sir Muhammad Shafi, who, for three and a half years, led the Council of State with conspicuous ability and distinction. Though I am not prepared to agree with him on some important points which I shall stress later on, I must admit that the whole case for the Council of State has been put forward with a clearness and with an ability which could be scarcely equalled.

As regards the constitution of the Council of State, in my humble opinion, it would be too late now to contemplate the destruction of that body. It was with some disappointment and sorrow that I heard Mahatma Gandhi as well as my old friend, Pandit Malaviya, make their observations on this point; but I must say, in justice to Pandit Malaviya, that in the end he qualified his statement by agreeing to a continuance of the Second Chamber.

I personally think that it is needless to go into this question. The Simon Commission unanimously recommended the formation of an Upper Chamber. The Indian Central Committee—which consisted of some leading Members, and particularly Sir Hari Singh Gour, who has neither attachment nor affection for the Council of State—has also supported the continuance of the Upper Chamber. All the Provincial Governments have warmly supported the continuance of the Upper Chamber, some of them even going to the extent of demanding a Second Chamber in their own Provinces.

So far as regards the value and importance of the Council of State, I think that the last ten years have proved the necessity for its existence and its indispensibility. My friend, Sir Muhammad Shafi, has spoken at length upon this point. I do not propose to repeat the same arguments as he urged showing how the Council of State has, during the last eleven years, justified its existence—what an important corrective body it has been, and what an important revising Chamber it has been in revising and modifying some of the decisions of the Assembly. Unfortunately, the Council of State started with no blessing from the Legislative Assembly. As everyone knows, the relations between the Legislative Assembly and the Council of State during the last ten years have been far from harmonious.

Mr. Jayakar: Question.

Sir Maneckjee Dadabhoy: I will refer to only two Bills. One is the Finance Bill regarding Salt. Whe[illegible]ter rejection in the Assembly, it was brought forward as a [illegible]asure before the Council of State, raising the Salt D[illegible]fied [illegible]s passed by the Council of State.

Sir Tej Bahadur Sapru: How does Sir Maneckjee Dadabhoy take credit for the Council of State if a Bill had been certified? Neither of the two Houses had any discretion left when the Bill had been certified.

Sir Maneckjee Dadabhoy: That is a different matter. A Bill may be certified and brought before the Upper Chamber. That does not mean that every Member of the Upper Chamber is bound to give his consent and co-operation to that Bill. When the certified Bill was brought before the Council of State almost all the Members spoke on the question and supported it. My friend knows as well as I do the dissatisfaction as regards the passing of this measure by the Council of State, or, at any rate, the Council of State giving its moral support to the Government in enhancing the Salt Duty. That caused considerable dissatisfaction and disconent among the Members of the Assembly.

Mr. Iyengar: Is it not provided that, whether the Council of State assents to the Bill or dissents from it, it shall nevertheless become Law, and that the Council of State is an absolute cipher under Section 67B?

Sir Maneckjee Dadabhoy: You must quarrel with the legislators and not with me; I am not responsible for that. The second instance I am in a position to give, is the wrath, discontent, and dissatisfaction which was created in the Assembly when the Council of State passed what is commonly known as the Princes' Bill. These two illustrations I remember myself, and I saw the manner in which the Assembly took them. Moreover, it is an open secret (many Members of the Assembly have been very frank in this matter) that there are many Members of the Assembly who even share the view that the Council of State is a defunct, superfluous, decrepit body, and that it consists of men of no consequence, and of men who are probably inferior in average ability as compared with the Members of the Assembly, forgetting at the same time the important stakes which most of those men have in the country and its good and orderly government. I do not blame the Assembly for these relations. Perhaps in a small degree the House of Commons also has not much love or attachment for the House of Lords; but in the peculiar circumstances of India, in my humble opinion, the Upper Chamber is essential, and it ought to be continued with the full powers which it at present possesses.

My friend, Sir Muhammad Shafi, has spoken regarding the Money Bills. He has stated his own opinion, and the opinion of some of his friends, that Money Bills should only be allowed to be introduced in the Lower Chamber.

Sir Muhammad Shafi: But passed by both.

Sir Maneckjee Dadabhoy: Passed by both, but originally introduced into the Lower Chamber. As has been pointed out by my friend, Sir Tej Bahadur Sapru, the present law does not make any such distinction; and I, for one, with great respect, must differ

with my friend, Sir Muhammad Shafi, in this matter. When vested rights have been created, when special rights have been given to any legislative body, I am averse to taking away those rights and those privileges without very strong grounds. There should be sufficient and ample justification before the adoption of such a course. My Lord, in the Reports—the Simon Commission Report, the Indian Central Committee Report, the Government of India's Despatch and the opinions of the Provincial Governments—I look in vain for any such recommendation as is now pressed by my friend, Sir Muhammad Shafi. I think it would be unreasonable at this stage—after so many years of working, and when the Council of State has proved its usefulness as a body—even to contemplate any such retrogression. My Lord, I will quote in this connection a passage from the Montagu-Chelmsford Report. Mr. Montagu, who was so anxious to advance India, even in the case of the Council of State, was prepared to give special powers—not only concurrent powers but some additional special powers. The concluding sentence of paragraph 279 is as follows:—

> "Further, there may be cases when the consideration of a measure by both Chambers would take too long if the emergency which called for the measure is to be met. Such a contingency should rarely arise; but we advise that, in cases of emergency, so certified by the Governor-General in Council, it should be open to the Government to introduce a Bill in the Council of State, and upon its being passed there merely to report it to the Assembly."

The recommendation of Mr. Montagu and Lord Chelmsford went far beyond what is embodied and incorporated in the present Act; and I say this in virtue of that decision—that, in the absence of any such recommendation from the Provincial Governments or the Government of India, we should not disturb the existing arrangement. My friend, Sir Muhammad Shafi, in support of his argument, referred to the Constitutions of South Africa, Canada and Australia, and suggested that we should do this for the sake of uniformity. Sir, I am opposed to the slavish imitation of any measure. Canada, Australia and other Dominions may, in their wisdom, do many things which may fit in and suit their own conditions, their own administration and their own Government; but we are not bound by that. Here again I quote what the Federal Structure sub-Committee has decided. Paragraph 25, page 21, says:—

> "But India's own practical needs and conditions must be the governing factors, and no constitution, however theoretically perfect, and however closely modelled upon precedents adopted elsewhere, is likely to survive the tests of experience unless it conforms to the needs and genius of the country which adopts it, and unless it is capable of adaptation and modification as the character of these needs is proved in the working."

This answer which was given by the Federal Structure sub-Committee, in my opinion, is quite sufficient—that we should not follow the Dominions in their precedents because the conditions in India are peculiar, and we must go only by our past experience in this matter.

I entirely agree with my friend, Sir Muhammad Shafi, in regard to what he said as to the power of the Assembly alone to pass the Budget. I do not ask that Members of the Council of State should go into those discussions and consider those demands which generally take a long time, often fifteen or twenty days' discussion, in the Assembly. We are very gladly prepared to leave all that work to our friends in the Assembly. I am not anxious that this work should devolve on the Members of the Council of State.

Now, Sir, regarding the holding of Joint Sessions of both Houses, I have to make a few observations. During the eleven years of the existence of the Montagu-Chelmsford Reforms, despite this provision in the Government of India Act, on not a single occasion has a Joint Session of both Houses been held. There were various measures as to which there was a great deal of conflict of opinion between the Assembly and the Council of State. There was a great deal of difference of opinion and conflict *inter se* among the Members of the Legislative Assembly. Though the Governor-General had power under the Act to convene both Houses and immediately settle the question, this power was not exercised by the Governor-General. The reason for that is plain and obvious to my mind. So far as ordinary legislative measures are concerned, and where the exercise of the powers of certification by the Governor-General is not necessary, why should the Governor-General identify himself with measures in which both Houses are interested? What is the necessity for the Governor-General to take upon himself the responsibility of convening a Joint Session of both Houses? Though there were so many conflicts of opinion during the last ten years, those powers were not exercised simply because the Governor-General did not think it either necessary or essential in the interest of the State to convene such a Joint Session. I am speaking about the existing state of things; and, in my opinion, a very strong objection to the holding of such a Joint Session would be this. If a Bill were rejected by the Assembly by a majority and were passed by the Council of State, what would be the result of holding a Joint Session, as both the Assembly and the Council of State are constituted at present? The Council of State has a solid official bloc. It is generally known, and is argued by our friends, that the Members of the Council of State generally support the Government. I want to be perfectly frank and put the case from both points of view. If that be their opinion, the Legislative Assembly would certainly not like a Bill which they had rejected to be discussed by a Joint Session, because the result might be that, if they rejected a Bill by a small majority only, the Joint Session might accept it with a bigger majority.

I do not wish, however, to be misunderstood in this connection. I am not for a moment urging that Joint Sessions should be dispensed with entirely. I think this power of holding a Joint Session in special cases may be very useful; and, although this power and privilege has not been exercised in the past, I shall not vote for its entire removal. I am not in agreement, therefore, with the suggestion that the word "shall" shall be substituted for the word "may" in that section.

So far as the other powers are concerned, I am quite in agreement with my friend, Sir Muhammad Shafi. The powers of both the bodies should, in my opinion, be concurrent, and nothing should be done to emasculate either House in any definite manner.

I must now refer to one important matter which has been discussed by the Simon Commission in their Report as well as in the Government of India's Despatch. I refer to the formation of the Provincial Fund, which is recommended by the Simon Commission in their Report. The Simon Commission recommend that the taxes which form the basis of the Provincial Fund should be discussed only by the Assembly and that the Upper Chamber should have no right to interfere with the decision of the Federal Assembly.

Chairman: To which volume of the Simon Report do you refer?

Sir Maneckjee Dadabhoy: It is Volume II, paragraph 159, page 132:—

> "We are therefore persuaded that the scheme suggested in Mr. Layton's report for the constitution of a Provincial Fund offers the most satisfactory means of ensuring adequate resources to the Provinces without infringing their autonomy. This Fund will be fed by the product of taxes, voted by a Federal Assembly representing Provincial Units, but collected centrally."

I am reading this because it is essential for the argument which I propose to advance.

> "Consequently, we propose that, in the financial sphere, the Federal Assembly should perform a dual function. It should be not only the representative body for the purpose of imposing taxation for the needs of the Central Government, of voting estimates, and of controlling expenditure at the Centre, but also a federal instrument for raising the necessary additional funds for the Provincial Governments."

These words are very important:—

> "but also a federal instrument for raising the necessary additional funds for the Provincial Governments. One of the reasons which have led us to reconstruct the Central Legislature on a basis of representation of Federal Units is that a body so formed will be suitably composed for performing this function. The Council of State will, as hitherto, be restricted in regard to finance to passing or rejecting Money Bills relating to central revenues, and will have no concern with the Provincial Fund Bill."

This is the point which I am now pressing before this Committee. I entirely disagree with these remarks of the Simon Commission. I am definitely of opinion that, on the very grounds which the Simon Cimmission have taken, it is essential that the power of rejecting or passing a Bill which is given to the Assembly should also be given to the Council of State.

I will now endeavour to state my reasons briefly. At this stage I do not propose to express any opinion about the merits of this Provincial Fund. I shall have another opportunity, when discussing Federal finance, to deal with this subject at some considerable length. I am only discussing here whether the Council of State also should have this power or not, and what are the reasons for taking away this power from the Upper House. How is this Fund to be created and what are the recommendations with regard to it? It is recommended that there should be created a Provincial Fund fed by specially designated taxes including (*a*) Excise on Cigarettes, (*b*) Excise on Matches and (*c*) the duty on Salt, to be transferred when the Central Budget situation permits. Sir Walter Layton has recommended that, in a short time, when the revenues of the Government of India increase by augmentation of Customs duties, Salt should be transferred to the Provincial Fund. That is the recommendation of the Simon Commission; and it is recommended that the Fund should be started. Then Sir Walter Layton made certain significant recommendations as regards the distribution of this Fund among the Provinces, as well as about the Fund's being distributed on grounds irrespective of the population of each Province. This is very important.

Now, this new Federal Upper Chamber is going to be both a House in which the Princes will take their place and one which will be attended by Members from British India. Each of the subjects which I have mentioned—Excise on Cigarettes, Excise on Matches, and the duty on Salt—must, as you will see if you examine the matter, necessarily affect the Indian States indirectly. Immediately you put those duties on, the subjects of Indian States will have to pay more for matches, cigarettes, and salt. Sir Walter Layton recommends the imposition of these taxes; but the Fund thus accumulated is not to be divided with the Indian States, but only between the Provinces, and the Indian States are eliminated from a share in the funds accumulated.

Chairman: I am very much interested. What you are saying is most important; but, in order to get my note right, would you just tell me which head you are discussing?

Sir Maneckjee Dadabhoy: I am discussing the relations between the powers of the two Chambers; and I say with all the emphasis at my disposal that it is unfair to deprive the Council of State, or the Upper House, of the power of considering any Bill sanctioning or passing the imposition of these taxes.

Then I come to this, that the Provinces, according to the recommendations of Sir Walter Layton, are only to share *per capita* in

the Fund raised at the discretion of the Government of India, but the States are not to come in, though the States are very considerably affected by the imposition of these taxes; and I say it is neither right nor fair to the States, nor is it right or fair to the other Members of the Upper House, that on such important measures as the taxation of cigarettes, which are extensively used now, they should not be consulted. There are no match factories in the Native States.

Several Members: Yes, there are.

Sir Maneckjee Dadabhoy: There may be some.

Colonel Haksar: Mysore is one.

Sir Maneckjee Dadabhoy: There may be one State; I am speaking generally of the Indian States. These are important questions of taxation, and I do not agree with the recommendation of the Simon Commission on this point.

Further, the necessity of giving such power to the Upper Chamber becomes more essential when we have got the decisive opinion of the Simon Commission that the Governor-General himself is not to exercise any power of certification for over-ruling the Federal Assembly's decisions. This you will find at page 134 of the Simon Commission's Report.

I therefore think that the existence of this power in the Upper Chamber is very necessary, and I, at least, who have been identified with the Council of State for many years, should be very sorry to see such an important power, such an important privilege, taken away from the Council of State.

Sir Tej Bahadur Sapru: My Lord, the subject which we are now called upon to discuss is, I need scarcely say, one of the most vital importance so far as the future Legislature of India is concerned. At the very outset there is one preliminary remark which I shall venture to make, with Your Lordship's permission, and it is this. If one carefully examines the questions which have been grouped under Head No. 3, it becomes quite manifest that the basis of all those questions is that the Legislature of the future shall be a bicameral Legislature. Sir Muhammad Shafi this morning discussed the question as to whether the Legislature that we are going to create shall be a bicameral one or a single-chamber one. I do not propose to go into that question at any great length; but, in view of the fact that a note of dissent has been sounded—I will not say a definite opinion has been expressed—by Mr. Gandhi, on this question, I will venture to say that, unfortunately for myself, I have come to a different conclusion from that which was suggested by Mahatma Gandhi on this particular point.

In the first place, you will not find a precedent for a Federal State being run on the system of a unicameral Legislature. Nearly everywhere—indeed, I think I am right in saying everywhere—wherever there is a federal constitution you have got a two-chamber Legislature.

Sir Muhammad Shafi: With the exception of Russia.

Sir Tej Bahadur Sapru: Well, Sir Muhammad will pardon me if I say that I am not taking Russia into consideration. I leave it to him to discuss Russian affairs.

The reason, to my mind, for a bicameral Legislature is not far to seek. It is entirely immaterial for the purposes of this argument whether the election to the Second Chamber is of a direct character or of an indirect character; but I believe that it cannot be seriously contradicted that the States and governments have also got a right to be represented in a federal constitution. It is for that reason that, generally speaking, political experience has provided for a Second Chamber under a federal constitution. The necessity for a Second Chamber under a federal constitution becomes all the greater when we bear in mind that the federation which we have in view is an all-India Federation, consisting, not merely of Provinces of British India, but also of independent sovereign States which have agreed to come into this all-India Federation. For that reason I think that we must stick to the decision at which we arrived last year. I do not think that it is essentially a question of democratic principles being violated, but it is really a question of a constitutional character; and I would therefore say that, so far as the question of a Second Chamber is concerned, I feel myself committed to that, and nothing has been said during the last two or three days which would incline me to differ from that view.

But the Second Chamber that I have in view will be of a very different character from the Second Chamber of which our friend Sir Maneckjee Dadabhoy is such an ardent champion. I will not say anything to annoy Sir Maneckjee or to wound his susceptibilities. I have never had the honour or privilege of being a Member of the Council of State, though, in my official capacity I was called upon to address it twice. Let me tell you frankly that, if there is one branch of the Legislature in India which has failed to produce any impression on public minds, it is the Upper Chamber.

Sir Maneckjee Dadabhoy: Is that the view of all the governments?

Sir Tej Bahadur Sapru: That is the view of the Government of India, if you will look up its Secret Despatches. The reason is obvious. I am making no reflection upon the character of the men who are Members of that distinguished body, of which Sir Maneckjee Dadabhoy is such a distinguished advocate. When you bear in mind the constitution of that Second Chamber—the very narrow and limited franchise on which it has been elected, and the existence of an official bloc—then it does not seem to be a surprising feature of our constitution that that Chamber should not have produced really the impression which a living and vital Second Chamber has to produce in any constitution.

Sir Maneckjee Dadabhoy: Has the House of Lords produced that impression?

Sir Tej Bahadur Sapru: My answer is that there are many things in the British Constitution which I should like to follow, but there are many things in the British Constitution which ought also to be a warning to every one of us. I do not discuss the relative merits of the House of Lords and the House of Commons. I am quite content to deal with the situation in my own country.

Let me give one warning here? If you are going to have a federal constitution in which you want to incorporate the Indian States, you want to have a Second Chamber which will serve the purpose for which it is to be created. You do not want a Second Chamber which will be a drag on our progress. You do not want a Second Chamber which can take credit for things done and not done which do not belong to it. When a Bill has been certified there is absolutely no discussion left to any Chamber in the Indian Constitution; and it is idle for Sir Maneckjee Dadabhoy to say: "How well have we behaved in the Second Chamber because, when certified Bills have come to us, every one of us has warmly supported them." The answer is that you had no option in any matter of that kind.

Sir Maneckjee Dadabhoy: Have we not, besides that, modified Official Bills which have been passed?

Sir Tej Bahadur Sapru: Sometimes very wrongly.

Sir Maneckjee Dadabhoy: And you accepted those modifications. You have not asked for a Joint Session. You have accepted those modifications which the Council of State has made in your Official Bills.

Sir Tej Bahadur Sapru: If Sir Maneckjee Dadabhoy would like it very plainly from me, I do not think that there is a single Indian who will shed a tear to-day over the death of the Council of State.

Sir Muhammad Shafi: Cannot a certified Bill be rejected in the House? I know that it cannot be modified. It must be passed as recommended.

Sir Tej Bahadur Sapru: It is making a virtue of necessity.

(The Committee adjourned at 1-10 p.m. and resumed at 2-30 p.m.)

Sir Tej Bahadur Sapru: My Lord, I can say no more about the Second Chamber, because that it is not the direct matter before us under Head No. 3. Head No. 3, if you examine the terms of the various questions, concerns itself with the relative powers of the two Houses, and we are called upon to make such provision as appears right to us in regard to the powers of the one House or of the other House, or of the relation of the two Houses taken together.

Now, My Lord, I would like to remind this Committee of the present position in India. It is true that we have got two Chambers; but it is likely to be forgotten that although we have a Legislature consisting of two Chambers—a Lower Chamber and an Upper Chamber—yet the powers of that Legislature are very circumscribed by the Statute which has created it. May I, in this connection,

invite Your Lordship's attention to two particular sections of the Government of India Act. Section 63 of the Government of India Act runs as follows:—

> "Subject to the provisions of this Act, the Indian Legislature shall consist of the Governor-General and two Chambers, namely, the Council of State and the Legislative Assembly. Except as otherwise provided by or under this Act, a Bill shall not be deemed to have been passed by the Indian Legislature unless it has been agreed to by both Chambers."

Now, what I would like to point out under this Section is that this expressly provides for the assent of the two Chambers, and it also provides for the possibility of an amendment being made to any proposal, made by the Lower Chamber, in the Upper House. Let us first compare the position as it exists in regard to this matter in the Dominions. So far as Canada is concerned, the relevant section is Section 53, and I will read to Your Lordship the language of that section to show that, although it does not expressly provide for the assent of the two Houses, yet that is the necessary implication. This is the section:—

> "Bills for appopriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons."

In Australia it is Section 53.—

> "Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.
>
> The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.
>
> The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.
>
> The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.
>
> Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws."

With the solitary exception in regard to Money Bills, therefore, the Senate in Australia has equal powers with the Lower House. Now

Sir Tej Bahadur Sapru: My answer is that there are many things in the British Constitution which I should like to follow, but there are many things in the British Constitution which ought also to be a warning to every one of us. I do not discuss the relative merits of the House of Lords and the House of Commons. I am quite content to deal with the situation in my own country.

Let me give one warning here? If you are going to have a federal constitution in which you want to incorporate the Indian States, you want to have a Second Chamber which will serve the purposes for which it is to be created. You do not want a Second Chamber which will be a drag on our progress. You do not want a Second Chamber which can take credit for things done and actions which do not belong to it. When a Bill has been certified there is absolutely no discussion left to any Chamber in the Indian Constitution; and it is idle for Sir Maneckjee Dadabhoy to say: "How well have we behaved in the Second Chamber because, when certified Bills have come to us, every one of us has warmly supported them." The answer is that you had no option in any matter of that kind.

Sir Maneckjee Dadabhoy: Have we not, besides that, modified official Bills which have been passed?

Sir Tej Bahadur Sapru: Sometimes very wrongly.

Sir Maneckjee Dadabhoy: And you accepted those modifications. You have not asked for a Joint Session. You have accepted those modifications which the Council of State has made in your Official Bills.

Sir Tej Bahadur Sapru: If Sir Maneckjee Dadabhoy would like it very plainly from me, I do not think that there is a single Indian who will shed a tear to-day over the death of the Council of State.

Sir Muhammad Shafi: Cannot a certified Bill be rejected in the House? I know that it cannot be modified. It must be passed as recommended.

Sir Tej Bahadur Sapru: It is making a virtue of necessity.

(The Committee adjourned at 1-10 p.m. and resumed at 2-30 p.m.)

Sir Tej Bahadur Sapru: My Lord, I can say no more about the Second Chamber, because that it is not the direct matter before us under Head No. 3. Head No. 3, if you examine the terms of the various questions, concerns itself with the relative powers of the two Houses, and we are called upon to make such provision as appears right to us in regard to the powers of the one House or of the other House, or of the relation of the two Houses taken together.

Now, My Lord, I would like to remind this Committee of the present position in India. It is true that we have got two Chambers; but it is likely to be forgotten that although we have a Legislature consisting of two Chambers—a Lower Chamber and an Upper Chamber—yet the powers of that Legislature are very circumscribed by the Statute which has created it. May I, in this connection,

invite Your Lordship's attention to two particular sections of the Government of India Act. Section 63 of the Government of India Act runs as follows:—

> "Subject to the provisions of this Act, the Indian Legislature shall consist of the Governor-General and two Chambers, namely, the Council of State and the Legislative Assembly. Except as otherwise provided by or under this Act, a Bill shall not be deemed to have been passed by the Indian Legislature unless it has been agreed to by both Chambers."

Now, what I would like to point out under this Section is that this expressly provides for the assent of the two Chambers, and it also provides for the possibility of an amendment being made to any proposal, made by the Lower Chamber, in the Upper House. Let us first compare the position as it exists in regard to this matter in the Dominions. So far as Canada is concerned, the relevant section is Section 53, and I will read to Your Lordship the language of that section to show that, although it does not expressly provide for the assent of the two Houses, yet that is the necessary implication. This is the section:—

> "Bills for appopriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons."

In Australia it is Section 53:—

> "Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.
>
> The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.
>
> The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.
>
> The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.
>
> Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws."

With the solitary exception in regard to Money Bills, therefore, the Senate in Australia has equal powers with the Lower House. Now

let us come to South Africa. The relevant Sections there are Sections 60-63. Section 60 of the Act is as follows:—

> "(1) Bills appropriating revenue or moneys or imposing taxation shall originate only in the House of Assembly. But a Bill shall not be taken to appropriate revenue or moneys or to impose taxation by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties.
>
> (2) The Senate may not amend any Bills so far as they impose taxation or appropriate revenue or moneys for the services of the Government.
>
> (3) The Senate may not amend any Bill so as to increase any proposed charges or burden on the people."

Then Section 61 says:—

> "Any Bill which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation."

Section 62 says:—

> "The House of Assembly shall not originate or pass any vote, resolution, address, or Bill for the appropriation of any part of the public revenue or of any tax or impost to any purpose unless such appropriation has been recommended by message from the Governor-General during the Session in which such vote, resolution, address, or Bill is proposed."

At this stage I shall not read Section 63, which deals with a joint sitting, with which I shall deal later.

That is the position. Therefore, bearing in mind the constitutions of the various Dominions and the present position, I am right in saying, I hope that the powers of the two Houses in the Dominions and in India at present are equal, except that, in regard to Money Bills, there are certain constitutional provisions of a special character to be found in the constitutions of the Dominions. The whole position has been very well reviewed by Sir John Marriott in his book, and I will read one particular passage from that book so as to save a great deal of argument on my part. At page 234 of his book he says:—

> "As regards Finance the powers of the English Upper House are inferior to most and superior to none. In Switzerland Money Bills may be introduced indifferently in either House, and, according to a high authority, the same is true of no less than twenty-one States of the American Union. The Federal Senate, though it has no power of initiation, has the right not only to reject but to amend Money Bills; and the right is freely exercised. In France a Bill 'concerning the opening of a Budget or the creation of a tax' must originate in the Chamber of Deputies, but the Senate has complete powers of rejection, and may even originate a 'Bill bearing on Budgetary expenditure.'"

Then he sums up:—

"Most Second Chambers have the power of rejection. Several have the power of amendment as well. The power of the Australian Senate is somewhat curtailed, and that of the South African still more so. But no Second Chamber can possess less authority over Finance than our own."

Now, My Lord, the questions which directly arise are these:— Are the powers of the two Houses in the Federal Constitution that we contemplate, going to be equal? Are there going to be any special provisions with regard to Money Bills? Are you going to give the Senate or the Upper House the power to amend any Bills passed by the Lower House, or are you going to give the Senate a power of making suggestions or making references to the Lower House and, if so, what is going to be the ultimate solution in case there is a deadlock or a conflict between the two Houses? These are the questions that arise out of these various constitutions.

Speaking for myself, I venture to think that, except in regard to Money Bills—which, in my humble opinion, should originate in the Lower House—in all other respects the power of the two Houses should be equal. You will find in actual practice that this conduces to a great deal of economy of time, and at times it is found very convenient by the government of the day to have the power of introducing a Bill in the Upper House also. Exception is made, no doubt, in respect of Money Bills, as I have already pointed out. Therefore I suggest that, save as regards Money Bills, we should agree to the power of the two Houses being equal.

As regards Money Bills, my submission is that they should originate in the Lower House, though, as pointed out by Sir Muhammad Shafi, the two Houses should have the power of passing the Bill. But it is conceivable that, on certain occasions, there may be a deadlock; and how are we going to solve that deadlock? Most of these questions were considered by the Bryce Committee. I am not going to make, in all respects, exactly the suggestions contained in the Report of that Committee, but I should like to follow the well-established practice in one or other of two Dominions. Whenever a conflict arises in Australia, you have a particular procedure prescribed by the Commonwealth of Australia Act which has got to be followed there. Similarly, there is a particular procedure prescribed by the South Africa Act. In substance, the principle followed in both countries is exactly the same, though in one or two respects there is a great difference between the two. Now, so far as South Africa is concerned, the relevant section in the South African constitution is, I believe, Section 63. It says:—

"If the House of Assembly passes any Bill and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Assembly will not agree, and if the House of Assembly in the next session again passes the Bill with or without any amendments which have been made or

agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Assembly will not agree, the Governor-General may during that session convene a joint sitting of the members of the Senate and the House of Assembly. The members present at any such joint sitting may deliberate and shall vote together upon the Bill as last proposed by the House of Assembly and upon amendments, if any, which have been made therein by one House of Parliament and not agreed to by the other; and any such amendments which are affirmed by a majority of the total number of members of the Senate and House of Assembly present at such sitting shall be taken to have been carried, and if the Bill, with the amendments, if any, is affirmed by a majority of the members of the Senate and the House of Assembly present at such sitting, it shall be taken to have been duly passed by both Houses of Parliament: Provided that, if the Senate shall reject or fail to pass any Bill dealing with appropriation of revenue or moneys for the public service, such joint sitting may be convened during the same session in which the Senate so rejects or fails to pass such Bill."

Last year, when I dealt with the subject, I commended to the Committee the South African model as preferable to the Australian model. My reasons were these. First of all, under the Australian Constitution, there is provision for dissolution. We need not have that in India. Secondly, under the South African Constitution, the majority provided is a simple majority, that is to say, a majority of the men present at the Joint Session; whereas, if you go to the Australian Constitution, you will find, first of all, that there must be a dissolution, and then there may be a Joint Session. I will just point out to the Committee that section. Section 57 provides:

"If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.

If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the

Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives.

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one house and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and the House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor-General for the Queen's assent."

As I have just pointed out, it seems to me that the South African model is much simpler, and will be more suited to the needs of our country. There does not seem to me to be any very strong and cogent reason why (I am speaking with special reference to India) there should be a dissolution both of the Senate and of the Lower House whenever a deadlock like that arises, nor does it seem to me to be very necessary that the Governor-General (or whoever be the authority in whom you may vest the power of calling for a Joint Session) should wait for a certain period—three months or six months. If the deadlock arises out of a Bill which is of a very urgent character, in the public interest there is no reason why the Governor-General, or whoever be the authority vested with that power, should not convene a Joint Session immediately

Similarly, I say that, in regard to the power of amendment, you will find that the Australian Constitution provides for an absolute majority, whereas the South African Constitution provides for a majority of the members present at the Joint Session—in other words, for what is technically known as a simple majority. Again I speak with great respect; but there does not seem to me to be any reason why, having regard to the conditions of India, we should insist upon an absolute majority. It may be at times very difficult for us to be guided by an absolute majority, and it may give rise to a great deal of misconception in the public mind. Therefore, the simpler course, if a Joint Session of the two Houses takes place, is for us to rely upon the majority of the members of the two Houses taken together who may be present at that Joint Session; and I should certainly dispense with the necessity for a dissolution before the Joint Session is called for.

Chairman: May I just see that I have got on my note what you have said. I think it is this:—"Except with regard to Money Bills, which should originate in the Lower House, any Bill in

either House. Deadlock: simple majority of Joint Session. Governor-General to convene immediately." That is right, is it not?

Sir Tej Bahadur Sapru: Those are my points. Now, My Lord, you will find that, in certain constitutions, an attempt has been made to define a Money Bill, and I will appeal to Your Lordship's experience that it is not always very easy to define what a Money Bill is.

Chairman: No.

Sir Tej Bahadur Sapru: It is extremely difficult at times to say when a Bill is a Money Bill and when it ceases to be a Money Bill; but, if you have equal powers, and if you give the Governor-General all the necessary authority and power to call a Joint Session, it does not seem to me to be necessary to make a special provision in our constitution for the definition of a Money Bill, or to provide a special machinery for deciding when a Bill is a Money Bill.

In this connexion, I would refer to the attempt that has been made—and I understand successfully—in Ireland, to define what a Money Bill is and also to provide a special machinery for the settlement of that. I will read Article 35 of the Irish Constitution:—

> "Dáil Eireann shall in relation to the subject matter of Money Bills as hereinafter defined have legislative authority exclusive of Seanad Eireann.
>
> "A Money Bill means a Bill which contains only provisions dealing with all or any of the following subjects—namely, the imposition, repeal, remission, alteration or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on public monies or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; subordinate matters incidental to those subjects or any of them. In this definition the expressions 'taxation,' 'public money' and 'loan' respectively do not include any taxation, money or loan raised by local authorities or bodies for local purposes."

Well, to a very great extent this definition follows the definition of a Money Bill in England and also the recommendation of the Bryce Committee.

Then, as regards the machinery, I would particularly invite the attention of the Committee to the provision in the Irish Constitution:—

> "The Chairman of Dáil Eireann shall certify any Bill which in his opinion is a Money Bill to be a Money Bill, but, if within three days after a Bill has been passed by Dáil Eireann two-fifths of the members of either House by

> notice in writing addressed to the Chairman of the House of which they are members so require, the question whether the Bill is or is not a Money Bill shall be referred to a Committee of Privileges consisting of three members elected by each House with a Chairman, who shall be the senior judge of the Supreme Court able and willing to act, and who, in the case of an equality of votes, but not otherwise, shall be entitled to vote. The decision of the Committee on the question shall be final and conclusive."

Now, assuming that it becomes necessary for you to have some special provision for a Money Bill and a special clause defining a Money Bill, I would commend to this Committee the Irish model for its acceptance. The advantage that I see in it is this: In the first place, to keep the Governor-General out of party controversy; in the second place, to keep also the Speaker of the House, who should be above party politics so long as he is occupying that position, *out of party controversy.* You bring in a *small Committee*, consisting of an equal number of representatives of the two Houses, and you also bring in a trained lawyer, a Judge of the Supreme Court, to advise and guide them. That to my mind is the advantage of this system.

I hope some day or other Your Lordship will take up the question of the Supreme Court, because I have an uncomfortable feeling in my mind, and it is this—that last year that subject was crowded out of the agenda, and probably it has receded into the back-ground by now. But I do very strongly feel that it is no use talking of a Federal Constitution in India unless you constantly bear in mind the necessity of having a Supreme Court which will help us in solving many difficulties which may arise, either in regard to the Legislature or in regard to other matters. Therefore, I say, the procedure prescribed by the Irish Constitution seems to me to be certainly preferable to the procedure prescribed in certain other constitutions, which vest that power either in the Governor-General or in the Speaker.

Chairman: Sir Tej, before you go on, I want to see that I follow you. As we go along I think we shall find we get a very large measure of agreement, and it is my ambition to get you all, with ourselves, into an agreement. Up till now, I do not think there is very much difference between your position and that of Sir Muhammad Shafi. You see, what you have said is this: "Both Chambers equal."

Sir Tej Bahadur Sapru: Yes.

Chairman: That is what he also has said. "Except with regard to Money Bills." That is what he has said. "Money Bills in the Lower House." That is what he has said. Now, what about putting that clause in the constitution? He said he would like to put it in. Would you like to see it in too?

Sir Tej Bahadur Sapru: I should like that to be done.

Chairman: Very well; then that is agreed.

Chairman: "Deadlock: simple majority of Joint Session." That you have agreed to, Sir Muhammad?

Sir Muhammad Shafi: Yes.

Chairman: Then, with regard to what is a Money Bill, you say:—

"machinery for deciding like the Irish model."

I just want to ask you one further question. Just trace a history of a Money Bill, will you? Supposing a Money Bill comes before the Lower House and it is passed by the Lower House, what happens to it then?

Sir Tej Bahadur Sapru: What I say is that Money Bills must originate in the Lower House, but they must be passed by both Houses. In regard to that matter I am in complete agreement with Sir Muhammad Shafi; and you will find in other constitutions also that no distinction is made between one House and the other so far as the passing of the Bill is concerned, except, of course, in the German Constitution, and in constitutions similar to the German Constitution, where there is a provision for a referendum, which we do not contemplate in India. Those constitutions are different owing to the fact that they provide for a referendum.

Chairman: There is one other question which I am asked to put to you. Can it be amended in the Upper House?

Sir Tej Bahadur Sapru: I am going to deal with that immediately. I am also in agreement with Sir Muhammad Shafi, that so far as the question of the Vote of Supply is concerned, that must remain within the sphere of the Lower House.

With regard to the question of amendment, you will find that the power of amendment is enjoyed by certain Senates. For instance, the Senate of the United States and the French Senate have that power. What I would say in that connection is that I think we might follow in that respect the model of Australia and South Africa and give the Upper House the power to make suggestions and to make references to the Lower House. We might adopt the machinery that has been adopted either in Australia or in South Africa for settling differences that arise as a result of a deadlock between the two Houses when the Lower House refuses to accept any suggestion or reference back which the Upper House may have made. It should not be left to the Upper House to make an amendment of a certain Bill which has been particularly introduced by the Government of the day, the Government having adopted that Bill in view of the totality of circumstances which are present to its mind. I would not, therefore, give the power of amendment to the Upper House, but I would certainly vest it with the power to make suggestions to the Lower House.

I was going to deal with the question of the Joint Session. It has been suggested in certain quarters that, so far as joint sittings

are concerned, the power to call for them must rest with the Governor-General. I would venture to make a slight amendment to the suggestion made by Sir Muhammad Shafi in that respect. I would say that the power of deciding to call for a Joint Session should vest in the Government of the day. The Joint Session will be called technically by the Governor-General, but the advisers of the Governor-General—the Government of the day—must also have a voice, and indeed a decisive voice, in a matter of that character.

Dr. Ambedkar: There is one question I should like to put, if I may interpose at this point. Sir Tej said that, in the matter of Supply or Money Bills in general, the Upper House should have the right to make suggestions and references to the Lower House; but what happens if the Lower House does not accept the suggestions made?

Sir Tej Bahadur Sapru: Then the Upper House is free to reject the Bill, but if a deadlock thus arises you can follow the South African precedent and adopt their procedure.

Dr. Ambedkar: How can a deadlock arise if the Upper House has power only to make references or suggestions?

Sir Tej Bahadur Sapru: It may reject the Bill completely.

Sir Muhammad Shafi: Then what is the substantial difference between an amendment which is referred back to the Lower House and a suggestion to the Lower House which is backed by power to reject? What is the substantial difference between the two? The final decision is to be by Joint Session of the two Houses.

Sir Tej Bahadur Sapru: In the first place, it is more consistent with modern practice.

Dr. Ambedkar: According to your suggestion there would be no vital difference between Money Bills and others except this, that with regard to a Money Bill the Lower House alone would have the right of initiation. In all other matters the two Houses would be equal?

Sir Tej Bahadur Sapru: That, in effect, is what I have said.

Sir Maneckjee Dadabhoy: It is practically taking away the power of amendment or suggestion which you propose to give to the Upper House.

Sir Tej Bahadur Sapru: I would give the amplest possible power of making suggestions to the Upper House, but I should not allow the Upper House of its own authority to make amendments. The Lower House must have a chance to consider any suggestions.

Sir Muhammad Shafi: But the amendments made will go down to the Lower House.

Sir Tej Bahadur Sapru: Then that is technically not an amendment but a reference back. When you talk of an amendment you mean an amendment made by the Upper House in virtue of the power vested in it; whereas, according to me, the Upper House

make a reference back and gives the Lower House a chance to consider it and to decide whether to agree with it or not.

Sir Maneckji Dadabhoy: So far as Money Bills are concerned, the Upper House will be simply an advisory body?

Sir Tej Bahadur Sapru: It may reject.

Sir Maneckji Dadabhoy: What is the ultimate effect?

Sir Tej Bahadur Sapru: A joint sitting; there is no getting out of it.

Sir Muhammad Shafi: Substantially your view and my view are the same, but there is a difference of phraseology.

Several Members: Not even that.

Sir Tej Bahadur Sapru: Except this, that you would at once give the power of amendment to the Upper House, whereas I give it the power of reference to the Lower House, the Lower House having an opportunity to consider the suggestions made.

Sir Muhammad Shafi: I would refer their amendments to the Lower House.

Sir Tej Bahadur Sapru: If that is what you would call an amendment we are in agreement, but I should not call that an amendment.

Mr. Iyengar: Do you mean, when you speak of making suggestions for the consideration of the Lower House, that the procedure will be more informal and will enable these people to confer and to adjust differences more easily than if the suggestion were formally incorporated in the Statute and sent down for reconsideration, so that all the irritation caused by the latter procedure will be avoided?

Sir Tej Bahadur Sapru: That is exactly the reason why the formal procedure of amendment has been abandoned in the Dominions in favour of reference back.

Mr. Jinnah: By this suggestion of yours you would put the Lower House in the position of at least believing that they are the supreme authority in financial matters. Instead of the other House deliberating and passing an amendment formally and then sending it down, you wish technically to keep the power of the Lower House with regard to Money Bills?

Sir Tej Bahadur Sapru: That is my point.

Mr. Jinnah: Only you say that any reference or suggestion may be made by the Upper House as advice.

Sir Tej Bahadur Sapru: Yes.

Mr. Joshi: Before rejection?

Sir Tej Bahadur Sapru: Yes.

Mr. Jinnah: If the advice or reference back is considered by the Lower House, and the Lower House is still of its former opinion and sends the Bill back as originally passed, then it will be open to the Upper House to reject it. What happens then?

Sir Tej Bahadur Sapru: Then comes the *Joint Session.* That is my suggestion. It is the same practice as exists in Australia and South Africa, with this difference—that in Australia you require dissolution and in South Africa you do not.

Mr. Jinnah: If I may interpose just once more, there is one further point I should like to raise. I did not follow what you said, Sir Tej, about the Irish Constitution. You read a clause from the Irish Constitution. Was that on the supposition that, if the suggestion that Money Bills must be originally introduced in the Lower House is not accepted, then you suggest that alternative, or what?

Sir Tej Bahadur Sapru: I am afraid I do not follow the question.

Mr. Jinnah: You read a clause from the Irish Constitution which defines what is a Money Bill, and sets up machinery for the determination of a Money Bill. Am I to understand that is for the purpose of leaving it open to either House to introduce a Money Bill?

Sir Tej Bahadur Sapru: No. Under the Irish Constitution the Bill originates only in the Lower House.

Mr. Jinnah: Then what is the object of defining it?

Sir Tej Bahadur Sapru: *The issue may be raised of whether* a Bill is a Money Bill, and in that case the procedure to be followed is laid down—the appointment of a special committee and so on.

Mr. Jinnah: If the Irish Constitution, as you suggest, lays *down that every* Money Bill *must* be *introduced* in the Lower House . . . . .

Sir Tej Bahadur Sapru: But the question may arise, what is a Money *Bill?*

Mr. Jinnah: You mean, somebody may suggest.

Sir Tej Bahadur Sapru: Yes, somebody may suggest that it is a Money Bill; and this provision is introduced into the various constitutions *to answer the question,* what is a *Money Bill?*

Mr. Iyengar: Somebody may introduce in the Upper House a Money Bill in disguise?

Sir Tej Bahadur Sapru: Yes.

Mr. Jinnah: That is really to prevent anybody introducing a Bill which is a Money Bill in the Upper House.

Sir Tej Bahadur Sapru: To safeguard the principle that Money Bills must originate in the Lower House. It is only with regard *to that object.*

Mr. Jinnah: Now, My Lord, Sir Muhammad Shafi made the suggestion—I will resume the thread of my argument, if I may—that the power of calling a Joint Session should vest in the Governor-General. Well, I personally think that technically the power should belong to the Governor-General; but I should not exclude

the Government of the day from exercising a potent voice in that matter. I think the position of the Governor-General under the constitution that we are contemplating will be one of extreme difficulty, because the Governor-General must have somebody or other to fall back upon as his adviser—you will be making the position of the Governor-General extremely difficult if, without the aid or advantage of some advice, he has to decide himself whether there should be a Joint Session or not.

Sir Muhammad Shafi: May I point out to Sir Tej Bahadur Sapru that my proposal is that, in cases of difference of opinion as contemplated by the question, the matter shall be referred to a Joint Session. There is no option left to anybody. The Governor-General will have to call a Joint Session.

Sir Tej Bahadur Sapru: No; pardon me, I do not agree with that opinion. There may be certain Bills which it appears right and proper to allow to lapse. There may be other Bills which it may be necessary to refer to a Joint Session. Now, I would leave it to the Government of the day to decide whether they should allow a Bill to lapse absolutely, or whether they think the Bill is of such importance that it must go before a Joint Session. Now, I would leave it to the Government of the day to advise the Governor-General that, in their opinion, a particular Bill must go before the Joint Session of the two Houses.

Sir Muhammad Shafi: Then there is a clear difference of opinion between you and me on that point.

Sir Tej Bahadur Sapru: On that point, yes.

Mr. Jinnah: I do not see the difference. What you mean is this, that supposing the Government say, " Well we do not wish to carry on this controversy. ."

Sir Tej Bahadur Sapru: We drop it.

Mr. Jinnah: Yes, quite so. But if the Government of the day supported the Lower House, it would say, " Now, here is a conflict; we do not want to continue this controversy; " in other words, " we do not want to go on with the Bill "—then they may communicate with the Governor-General and say, " we do not wish to proceed with this Bill any further."

Sir Tej Bahadur Sapru: No; Sir Muhammad Shafi's view is that, in every case of difference, the Governor-General shall be bound to call a Joint Session. He gives no discretion to the Governor-General.

Mr. Jinnah: Would it not be best that the power shall be given to the Governor-General that he shall call the Joint Session? That is the power given to him—that he *shall;* but if it is communicated to the Governor-General by the Government of the day that, so far as the Lower House is concerned, they do not wish to carry on the controversy. . . . .

Sir Tej Bahadur Sapru: Therefore the proper legal expression, Mr. Jinnah, will be that the Governor-General *may* call, not that he *shall* call.

Mr. Jinnah: Quite so. Well now, cannot you meet that? That is merely a question of phraseology, is it not? Supposing the Government of the day does not wish to carry on the controversy?

Sir Tej Bahadur Sapru. Then it must drop.

Mr. Jayakar: I understood the point raised by Sir Muhammad Shafi was that in every case the Governor-General, whether it is the Governor-General alone or the Governor-General acting with the advice of the Government of the day, must call a Joint Session.

Sir Tej Bahadur Sapru: Yes; and that must involve a tremendous waste of time.

Mr. Jinnah: Yes, but supposing *one of the parties to the controversy* says, "I do not want to go on with the controversy"?

Sir Tej Bahadur Sapru: But then, why say that the Governor-General *shall?* *If you do that, he will have no option.*

Mr. Jinnah: You can provide for that by saying, "the Governor-General *shall* call a Joint Session *unless.*"

Sir Tej Bahadur Sapru: I quite agree Then it comes to the same thing as my suggestion.

Mr. Zafrullah Khan: Might I suggest that it might be desirble to frame it in this way—that the Governor-General shall call a Joint Session unless, in the case of a Government Bill, the the Government, and, in the case of a non-Government Bill, the Member-in-charge, *does not wish to proceed with the controversy.*

Sir Tej Bahadur Sapru: I have no difficulty about that if the Governor-General has a discretion; but according to Sir Muhammad Shafi's *suggestion* he would be *given no discretion* at all.

Mr. Jinnah: As you put it first, Sir Tej, you see, it sounded differently. As you put it first, it takes away the power from the Governor-General *altogether unless the Government of the day* advises him.

Sir Tej Bahadur Sapru: That is not what I meant, Mr. Jinnah. What I really meant to say was that, while I would give that power to the Governor-General, I would also give a potent voice—this is the phrase that I used—to the Government of the day, so that, if the Government of the day decided not to go on with a certain Bill, then there would be no occasion for the Governor-General to call a Joint Session; but, if the Government of the day said it must be referred to a Joint Session, then the Governor-General would have to call a Joint Session.

Sir Muhammad Shafi: I am prepared to accept Mr. Zafrullah Khan's suggestion, and to modify my original view to that extent.

Chairman: Is it really this, then—the Governor-General, in the case of a deadlock, to convene the Joint Session immediately unless the Government object. Is that right?

Mr. Jinnah: Unless the Government . . . .

Sir Tej Bahadur Sapru: Or the Member-in-Charge of the Bill.

Mr. Jinnah: . . . . . or the Member-in-charge of the Bill does not wish to proceed with the Bill any further.

Sir Tej Bahadur Sapru: Say the Government, not the Member-in-charge.

Chairman: I understand quite enough now.

Sir Tej Bahadur Sapru: So much with regard to the power of the Governor-General.

Now, in the questions which Your Lordship has framed—if I may respectfully point it out—there is no question bearing on any power of amendment of the constitution; and I should like to have Your Lordship's guidance in regard to that matter—as to whether that power should be dealt with separately or as to whether you think that there should be no power of amendment of the constitution in the Legislature.

Chairman: Well, as a matter of fact I have drawn up a great number of the questions that I want you to be good enough to discuss. This particular question is not under this Head at all. In my Heads there are 1, 2, 3 and another head, and I have got a Head under "Constituent Powers;" and it is under the Head of "Constituent Powers" that I shall ask you to be good enough to discuss that question.

Sir Tej Bahadur Sapru: I shall defer dealing with that question then, until it comes up under that Head.

My Lord, I have practically dealt with all the points covered by Your Lordship's questions. I will now take up each one of these questions and answer them categorically. I will take up each one of the questions under Head 3. The first question is:—

> "Is the constitution to provide that normally, though subject no doubt to any requirements to the contrary necessitated by Safeguards, the governing principle with regard to legislation is to be that the assent of both Chambers is required to the enactment of a Bill?"

My answer is in the affirmative.

> "(ii) If so, which of the two following possible alternatives shall be taken as the basis of the relationship between the two Chambers:—(*a*) that the powers and functions of both Chambers shall be approximately equal."

I say "yes" except in regard to Money Bills.

> "(*b*) that the decisions of one Chamber shall prevail over those of the other . . . ."

That does not really arise in the view that I have presented before the Committee.

> "(iii) If the deciding voice is to be vested *by the constitution* in one Chamber, in which of the two Chambers is it to be vested, and on what principles is the decision so to provide determined, having regard to the composition and method of election of each?"

I submit that that question too does not arise in view of the discussion which has already taken place.

> "(iv) If it is to be decided that the governing principle is to be equality of powers, shall the constitution provide—(a) that all Bills, including Money Bills, can be introduced in, and amended by, either Chamber."

I will make the suggestion that all Bills may be introduced in *either Chamber*.

Sir Muhammad Shafi: Except Money Bills?

Sir Tej Bahadur Sapru: Excluding Money Bills.

Sir Muhammad Shafi: Instead of the word "excluding" you have "including" here; that is all.

Sir Tej Bahadur Sapru: Yes.

> "(b) that the function of voting Supply shall be shared by both Chambers."

I do not agree with that; I say that the function of voting Supply shall be by the Lower House.

> "presumably sitting in Joint Session."

I do not agree.

> "since independent amendment of Demands for Grants by each Chamber would be likely to lead to complications and confusion; (c) that differences between the two Chambers, which prove incapable of reconciliation by the ordinary methods of "reference back' should be finally resolved (subject to any necessary provisions connected with Safeguards) by a majority vote of the Members present and voting at a Joint Session."

I agree with that.

> "(d) that a Joint Session shall be composed—(i) of all the Members of both Chambers, or (ii) of an equal number of representatives of each?"

Upon this point I would like to say a few words. I personally think that the Joint Session should be a session of all the Members of the two Houses. To have a small Committee, consisting of an equal number of members from the two Houses, would be really to erect a third Chamber, which is more or less the condition made by the Bryce Committee, and it did not find any favour here in constitutional circles. Besides, it would sometimes be difficult to secure an open mind from a Committee consisting of five men of one House and five men of the other House, whereas it seems to me that there would be plenty of room for conversion of opinion where you had the two Houses in their full strength sitting together.

> "(v) Shall the decision whether or not to summon a Joint Session in any given case rest with the Governor-General; and, consequently, shall it be a matter for the Government's

> discretion in each case to determine—(a) whether resort should be had to Joint Session to resolve a difference."

My answer is that technically the decision shall rest with the Governor-General, but the Government's discretion may come in to determine whether resort should be had to a Joint Session to resolve the difference or not.

Sir Muhammad Shafi: In the case of Government Bills.

Sir Tej Bahadur Sapru: I am talking of the case of Government Bills.

> " or (b), whether the ordinary principle indicated under Point (1) of this Head should be allowed to operate, with the consequence that the Bill in dispute would lapse?"

That does not arise in the view that I have taken. The last question is:—

> " (vi) Shall provision be made for the elapse normally of an interval before the calling of a Joint Session? If such provision were made as the general rule, shall special provision be made for the possibility in suitable cases of decision by Joint Session forthwith, *e.g.*, in the case of the Annual Finance Bill, or in other cases of emergency."

I have already anticipated my answer to this question by saying that we must follow the simpler and the more feasible model of the South African Constitution in preference to the Australian Constitution. That is all that I have to say.

Mr. Zafrullah Khan: Lord Chancellor, I intend to make a submission only with regard to certain matters arising under sub-head (iv) of Head 3, which is at present under discussion. It relates to the question of the powers of the two Houses in regard to certain Bills, and the procedure to be adopted in the case of a difference of opinion which cannot be resolved by ordinary methods. My submission—in view of what you have said as to the opportunity which will be afforded to the Committee of discussing the constituent elements of the constitution—will be briefer than it otherwise would have been. Not knowing whether we were to discuss it under a separate Head, I had made a note under (a). As it includes all Bills, I thought that perhaps the question of Constitutional Bills would also arise. I will omit that submission to-day and, if the necessity arises, I will make my submission under the Head which you have outlined.

With regard to the Joint Session which has been outlined under (c) of sub-head (iv) I am afraid that I have to differ from Sir Tej Bahadur Sapru with regard to one matter. This is a matter with regard to which so far as I was able to follow Sir Muhammad Shafi, he made no specific submission. I am referring to the question as to whether a matter which is referred to a Joint Session shall be decided by a simple majority of votes of the Members present, or as to whether any other provision should be made. Sir Tej Baha-

dur Sapru said a simple majority of the Members present should suffice. I have to put forward a different suggestion. We have all agreed that the *two Chambers of the Federal Legislature shall* have approximately equal powers. So far as the submissions so far made are concerned, Sir Tej Bahadur Sapru and Sir Muhammad Shafi both agree that the two Chambers shall have approximately equal powers. Sir Tej Bahadur Sapru has also visualised an Upper Chamber which shall be a vital and living Chamber, and not a copy of the present Council of State. He says that we shall have a Chamber which will perform the functions which it is *expected to perform.* Paragraph 26 of the second Report of the Federal Structure sub-Committee (on page 21) also visualises the Upper Chamber as a body of weight, experience, and character. But paragraph 26 also tentatively suggests that the strength of the Upper Chamber would be much smaller than the strength of the Lower Chamber. Having that in view—in case the total strength of the Lower Chamber is likely to be almost double that of the Upper Chamber—my submission would be that if, in case of a difference, a decision is to be arrived at in the Joint Session by a simple majority of the Members present, you are not giving equality of powers to this Chamber, which is to be vital and living and a body of weight, experience and character. That makes all the difference. If the strength of both Chambers were equal and all the Members of both Chambers participated in a Joint Session, I would then agree that, in case of a difference of opinion, it should be decided by a simple majority.

(Lord Sankey left the Chair, which was taken by Sir Samuel Hoare.)

Mr. Zafrullah Khan: I would in that case agree that a difference of opinion may be resolved in a Joint Session by either a vote of an absolute majority of the total number of the Members of the two Chambers, or even perhaps by a simple majority of those present. But I submit, with great respect to Sir Tej Bahadur Sapru, that the relative strength of the two Chambers makes a great deal of difference as to whether you will require a simple majority or an absolute majority, or even a higher figure, in case of a difference of opinion. A difference of opinion would arise only in case a majority of the one House is of one opinion and a majority of another House is of another opinion. It may be—except in the case of Money Bills, of course—that the measure with regard to which the difference has arisen has originated either in the Lower House or in the Upper House. The difference may have arisen either because the Upper House will not *accept the measure as passed by* the Lower House, or because the Lower House will not accept the measure proposed by the Upper House, or an amendment has not been agreed to by both Houses. Having this in view—in case eventually this Committee arrives at the conclusion that the relative strengths of the two Chambers should be as is outlined in the Report of the Federal Structure sub-Committee, that is to say the

strength of the Upper Chamber about half the strength of the Lower Chamber, and in case that is the position maintained actually in the Statute—my view is that a higher percentage should be required for a decision of the Joint Session to resolve differences. And I would submit that, in that case, a majority either of two-thirds of the Members present, or of three-fifths of the total strength of both Houses, should be insisted upon. In the case of a majority of three-fifths of the total number of Members, if you have 150 Members in the Upper House and say 300 in the Lower House, you would require the support of 270 Members in favour of the measure before the measure would pass, and that is nine-tenths of the Lower House. It will be observed that, in case there is a serious difference of opinion between the Lower House and the Upper House, if the Lower House can win support for the measure to the extent of 90 per cent. of its own members and induce them to be present—because I have said that in the case of a three-fifths majority it should be a majority of the total—the Lower House would still carry the measure in the teeth of the opposition of a united Upper House. But, in that case, it would require a very large majority of its own Members in order to carry the measure.

My submission, therefore, is that, having regard to the proposed strength—though I do not know whether that relative strength will be maintained—it is only consistent with the views expressed so far that the majority required should not be a simple majority or even an absolute majority of the total number of Members of both Houses, but a higher majority than that.

Dr. Ambedkar: Would Mr. Zafrullah Khan permit either Chamber sitting separately to decide upon measures by a simple majority or would he require an actual majority of the Members in that case?

Mr. Zafrullah Khan: A simple majority.

Dr. Ambedkar: Then I do not see why they should not decide questions by simple majority when they are sitting together.

Sir Muhammad Shafi: Because there is a difference of opinion between the two Houses.

Mr. Zafrullah Khan: Very often Members are not able to see the points of view of other Members; but one reason will be that the character of the two Houses will be different.

Sir Tej Bahadur Sapru: May I ask Mr. Zafrullah Khan to tell us whether he knows of any parallel of an absolute majority being required as high as two-thirds or three-fifths. It is a question of policy whether you have two-thirds or three-fifths.

Mr. Zafrullah Khan: I understand the question to be whether an absolute majority has ever been interpreted in that way.

Sir Tej Bahadur Sapru: As coming anywhere near two-thirds or three-fifths.

Mr. Zafrullah Khan: I have never said that: but if the question is whether any constitution insists upon a majority of three-

fifths before a measure can become law, I could refer Sir Tej Bahadur Sapru to several provisions in the new constitutions of the smaller States of Europe which have been formed since the War, with regard to several matters, more particularly in regard to constitutional amendments.

Sir Tej Bahadur Sapru: Constitutional amendments are different.

Mr. Zafrullah Khan: I am giving you an instance more particularly with regard to amendments of the constitution. Also with regard to other matters, in cases of difference of opinion, various percentages are laid down for the different Houses, *e.g.*, as to referendum or in regard to Joint Sessions that may have to be held. There are instances where such a majority is insisted upon. In any case, as has so frequently been observed in this Committee, we must have regard to the peculiar conditions in India and also, as I have said, to the relative strength of the Chambers. Merely because the Committee thinks that we shall have a more effective Upper Chamber if we keep its numbers within a certain limit, it should not follow that thereby the powers of the Upper Chamber should be reduced. Supposing we came to the conclusion that the relative strengths of the two Chambers should be the same, then Sir Tej Bahadur Sapru will appreciate that the question would assume an entirely different complexion immediately, and the Upper Chamber would have far more power in a Joint Session as a result of that than it would otherwise get. Therefore, my submission is that, merely because for certain consideration it may be necessary to keep the strength of the Upper Chamber at about one-half that of the Lower Chamber, it should not follow that its powers should be proportionately cut down, and that it should not carry as much weight in a Joint Session as it would have done if its numbers had been greater.

Sir Muhammad Shafi: In other words, what you say is this, with regard to the question put to you by Dr. Ambedkar—that in one case it is a difference of opinion between individuals, while, in the other case, it is a difference of opinion between the two Houses of Legislature. Therefore the two cases stand on an entirely different footing.

Mr. Zafrullah Khan: With regard to Dr. Ambedkar's question, I was in the course of explaining that the difference here is that the two Houses possess different characters. It has been desired throughout to constitute an Upper House which should not be a mere duplicate or a copy or a reflection or a mirror of the Lower House. If that is so, then we agree in principle, the moment we agree to the constitution of an Upper House, that the Upper House will be a House of a different character from the Lower House; and that it would make for the strength and stability of the constitution that is should be insisted upon that no measure shall become law unless it is assented to by both Houses. Therefore we have agreed, and we consider that it will be for the good of the working-

Mr. Zafrullah Khan: Naturally, I cannot hope merely by my answers to persuade all my friends to agree with me the moment I make a reply; but I am mentioning considerations which, to my mind, seem to require a higher majority. One consideration is that we on this side have agreed and do agree with (iv) (*d*) (i)—namely, that a Joint Session shall be composed of all the Members of both Chambers. *That being so, and the relative strength of each* Chamber in a Joint Session being what I have outlined, that is an additional reason for having a larger majority. Though everyone must have the right to come in and try to persuade his colleagues to vote one way or the other, the Chambers should be given approximately equal power in the case of a Joint Session.

I have only one word to add. If the membership of both Chambers were equal, or if we agreed to (iv) (*d*) (ii) and had an equal number of representatives of each House in a Joint Session, then my submission would lose its point. My submission is based on the assumption that the relative strength of the two Houses would be different and that all the Members of each House would take part *in the Joint Session.*

Sir Muhammad Shafi: Assuming all the 225 Members, in the case mentioned by Sir Sultan Ahmed, were Members of the Lower House, and the others were all Members of the Upper House, what would my friend Sir Sultan Ahmed say?

Chairman. I think, Sir Sultan, you will have to make your reply later.

Sir Provash Chunder Mitter: Before I deal with the different sub-heads specifically, I should like to place before the Committee certain arguments of a general nature. My friend, Sir Maneckjee Dadabhoy, from one point of view, and my friend, Sir Muhammad Shafi, from another point of view, have referred to the present Government of India Act, but there is one fundamental difference, and that fundamental difference is that under the present Government of India Act the responsibility is with the British Parliament. The constitution that we contemplate is a constitution where the responsibility will be in the Indian Legislature. If anything goes wrong under the present Act, the British Parliament has reserved to itself powers which it can exercise through its agents to protect the situation—powers of certification by the Governor-General, powers given to the Governor-General in Council, who is responsible to the British Parliament, and so on. When, however, the Indian Legislature assumes responsibility, it is necessary that the Indian Legislature should have sufficient powers to shape its policy, sufficient powers to prevent deadlocks and so on. Therefore, in answering all the questions on these various subjects, that is the general aspect which you should bear in mind. I have no doubt that the present Act is very important as a guide to what has taken place in the past; but whenever we refer to the present Act we should bear in mind that general observation, and I think Sir Muhammad Shafi did so when he referred to the present Act.

Mahatma Gandhi was referred to. I find, however, from page 92 of the report that was circulated to us, that what the Mahatma said was this:—

> "I am certainly not enamoured of and do not swear by two Houses of legislature. I have no fear of a popular Legislature running away with itself and hastily passing some laws of which afterwards it will have to repent."

Then, lower down, after discussing the Upper Chamber:—

> "Anyway, whilst I would not take up a decisive attitude in connection with it, personally I am firmly of opinion that we can do with one Chamber. . . ."

Well, that, no doubt, is the opinion of a very important representative. On the other hand, Their Highnesses have agreed to federate on the basis of two Chambers. Therefore we need hardly discuss the question of an Upper Chamber unless we go back upon this idea of federation. It may be that some on this side would like the one Chamber; but many would like two Chambers. And, if we are going to federate, there must be give-and take—not all take; and give-and-take means both sides. But even on the British Indian side there is a very fair amount of opinion which is in favour of two Chambers.

Now I will try to answer the questions categorically. Question No. (i) is:—

> "Is the constitution to provide that normally, though subject no doubt to any requirements to the contrary necessitated by Safeguards, the governing principle with regard to legislation is to be that the assent of both Chambers is required to the enactment of a Bill?"

I am of opinion that the final decision should be in the Joint Session; and, as the final decision should be with the Joint Session, the intermediate process becomes less important than if it were with either House.

Mr. Zafrullah Khan: Will you require a Joint Session in every case?

Sir Provash Chunder Mitter: No. Supposing both Houses agreed, there would be no question of a Joint Session. If the two *Houses do not agree, there will be Joint* Sessions. There are other cases, to which I will refer as I go on answering these questions, where a Joint Session may become necessary.

Then the second subject is—

> "If so, which of the two following possible alternatives shall be taken as the basis of the relationship between the two Chambers:—(*a*)that the powers and functions of both Chambers shall be approximately equal;"

I am in favour of the powers and functions being equal.

Then (*b*)—

> "That the decisions of one Chamber shall prevail over those of the other—or possibly that in some matters, *e.g.*,

finance, the right of decision shall vest in one Chamber only."

As regards questions other than finance, as ultimately the decision will be the decision of a Joint Session, this question, in view of my answer, does not arise so far as I am concerned. As regards finance, I shall deal with it separately along with Money Bills.

Then the third sub-head is this:—

"If the deciding voice is to be vested *by the Constitution* in one Chamber, in which of the two chambers is it to be vested, and on what principles is the decision so to provide determined, having regard to the composition and method of election of each?"

As I am in favour of a Joint Session of both Chambers, the answer to this question is not necessary, so far as I am concerned.

Then (iv):—

"If it is to be decided that the governing principle is to be equality of powers, shall the constitution provide—(*a*) that all Bills, including Money Bills, can be introduced in, and amended by, either Chamber?"

As regards (*a*), I am of opinion that "either Chamber" is the best. No doubt, according to the constitutional practice in most countries, all Money Bills, and all finance matters arise in the First Chamber, and that is right; and not only is that right, but we should aim at that when the transition period is over. But there is another aspect which we should not ignore, and that is that we are federating with regard to subjects in which Their Highnesses also are intimately concerned. Their position in the Lower Chamber—unless those who are in favour of the predominant power in the Lower Chamber, from the very beginning are willing to give them a larger number of votes than some of them, I think, are willing to give them—may be a position of difficulty. Now, if we want to run the constitution smoothly there must be a real understanding between Indian India and British India, from that point of view, during the transitional period at any rate. I have no strong objection to Money Bills being initiated in either Chamber; but I have no objection, speaking for myself, in view of the future, to initiating Money Bills only in the Lower Chamber, because ultimately the decision will be the decision of the Joint Session. I thought it right, however, to place before you the other aspect of the question—not that I have any strong objection to the initiative being in the Lower Chamber. But if the strength of the two Houses be different from what has been suggested—namely, 300 and 150—or if the removal of the Ministry be on a different basis, then I might have an objection. But I am now proceeding on the basis that the recommendations of last year will stand. Then, lastly, on the communal question, too, it may have an important bearing. I do not want, however, to develop that question here; it is a matter more for the Minorities Committee. That is all I have to say on sub-head (iv) (*a*).

I turn now to (*b*):—

> "that the function of voting Supply shall be shared by both Chambers—presumably sitting in Joint Session, since independent amendment of Demands for Grants by each Chamber would be likely to lead to complications and confusion."

I have only to repeat the answer I have already given. I need say no more.

Then (*c*) is this:—

> "*that differences* between the two Chambers, which prove incapable of reconciliation by the ordinary methods of 'reference back,' should be finally resolved (subject to any necessary provisions connected with Safeguards) by a majority vote of the Members present and voting at a Joint Session."

My answer is in the affirmative so far as the Joint Session is concerned; and if the strength of the Houses is to be 300 and 150, then no question arises about the control of the Ministry. If, on the other hand, the strength of the Houses be changed, then we may have to re-discuss this matter.

Then (*d*) is:—

> "that a Joint Session shall be composed—(i) of all the *Members of both Chambers, or (ii) of an equal number of* representatives of each?"

I am unhesitatingly of opinion that it should consist of all Members of both Chambers. To place the matter with a Committee of both the Houses will take away much that is in favour of a Joint Session or of an Upper Chamber.

Then sub-head (v):—

> "Shall the *decision whether or not to summon a Joint* Session in any given case rest with the Governor-General; and, *consequently*, shall it be a *matter for the Government's* discretion in each case to determine—(*a*) whether resort *should be had to Joint Session to resolve a difference, or* (*b*) whether the ordinary principle indicated under P[illegible] 1 *of this Head should be allowed to operate*, with the consequence that the Bill in dispute would lapse?"

I am of opinion, Sir, that it should not be with the Governor-General; and my reason is this. We should aim at making the Governor-General a constitutional Governor-General and we should not bring the Governor-General into controversy even during the transitional period of our constitutional development which is very necessary. From that point of view I would avoid the Governor-General if it be possible. As there will be a responsible Ministry I agree that it is a matter for the Ministry to decide. As regards private Members' Bills it is an unimportant point and I do not mind what you decide about them.

which I could agree in substance in the speeches of my colleagues that there was no need for me to inflict myself on the Committee till we took up the discussion of Head 3. This Head, dealing as it does with the relations between the two Chambers (if there are to be two), follows logically Head 2, which dealt with the method whereby these Chambers should be elected. In considering this Head, and, in fact, all other questions that will come before us, there is vital need to keep what I may call the realities of the position always prominently before us. I think that the great majority of the speakers on the British Indian side, if I may venture to say so, did a great service to the Federal idea when they subscribed to the views which we on this side firmly hold, namely, the principle of non-interference. It was on this ground that I said nothing with regard to the question of the system of representation in British India, and the comparative methods of direct and indirect election. I do not, of course, mean that so far as the States are concerned, they resent advice, or that they want to be impervious to the trend of public opinion. I mean only that our partners in the Federation should leave us full freedom of decision. We desire to be neither reactionary nor unprogressive. We desire to have freedom to order our affairs in the manner best suited to the traditions of our people. Speeches like those of Dr. Ambedkar, if I may say so, do not sufficiently appreciate the realities of the situation.

Dr. Ambedkar: I have never been guilty of not appreciating realities.

Sir Akbar Hydari: As Mr. Gandhi and Pandit Malaviya (whose statesmanlike pronouncements, so far as the Indian States are concerned, I take this occasion cordially to acknowledge) have realised, federation means amicable and consenting co-operation of various units for the common good. It will not do for Dr. Ambedkar to say that, unless we of the States do so and so, he will not agree to our entering into the Federation. That is not the language of business. We must remember that federation is in the interests of British India as much as in the interests of the Indian States. I will give an instance. My relations are at present with the Crown, which is paramount over me. It is because of the paramountcy of the Crown that a portion of the G. I. P. Railway runs through my territory. If Dr. Ambedkar left me out of the Federation he would not be able to travel from Bombay to Madras unless I gave him permission, for which he would have to plead with me, to let his railway run through my territory, in the same way as I allow the Crown at present to run the G. I. P. Railway between Raichur and Waddi. Again, coming as he does, as I understand, from Baroda, he could not correspond with anyone in Bombay unless postal communication was arranged between the two places, either through the paramountcy of the Crown, or by mutual agreement between His Highness The Gaekwar and the Government of Bombay. It is for this reason that most Indian States have freedom of mails as a definite article of treaty between them and the Crown.

The point, therefore, is that, for the administration of subjects which are of common concern to the States and British India, some sort of nexus is necessary. At present this nexus is the paramountcy of the Crown. In future, in those matters which are declared to be Federal, we hope that it will be the Federal Government, in which the Indian States will have their full share. Without it British India cannot administer subjects of all-Indian concern except through the Crown.

Speakers on the British Indian side, notably Mr. Gandhi and Pandit Malaviya, made a moving appeal to us on this side to introduce the principle of representation in our States. That our work should be solely directed to the welfare of our subjects, and should carry with it their co-operation in the fullest possible measure, are propositions which are axiomatic; but we are not sure whether the principle of election or the principle of selection, having regard to the circumstances in which we are placed, our traditions, and our history, will best achieve this end In this connection I would invite your attention to what I said when I spoke last that we in Hyderabad are trying in our own way to see how each vocational interest, through its own proper representative, may be brought into intimate contact with Government, so that it may have an opportunity of expressing its views, and Government of expressing their policy to it. I am, therefore, particularly grateful to the distinguished leaders of Indian opinion who have spoken in favour of giving us time to work out our ideas on this subject on our own lines, and I hope they on their side will regard this assurance in the same friendly spirit as that in which it is given.

My view in regard to question (1) under Head 3 is, that the governing principle with regard to legislation should be that the assent of both Chambers is required to the enactment of a Bill. I share with Mr. Gandhi a preference for a unicameral Federal Legislature, and it was only in deference to what we on this side understood to be the strongly held view of our British Indian colleagues that I agreed on the last occasion to a bicameral Legislature. I would, however, beg this Committee always to bear clearly in mind the content of the possible subjects within the scope of the Legislature and the best method of dealing with them, and. with this end in view, to decide on the strength and composition of the Legislature which will deal with them. It is conceded on all hands that the Units of the Federation will have the fullest possible autonomy. The Governments of these Units in British India will be wholly Indian; they will be fully responsible to democratic Legislatures. It will be these Units that will administer finally in full and unimpaired authority the subjects which most concern the people; their land revenue administration, their police administration, their system of education, public health, their development of education, irrigation, agriculture, and so forth. The subjects which will fall within the Federal sphere will be comparatively few. They will be largely administrative and very [illegible] l in

nature, such as Communications, Posts and Telegraphs, Currency, and so on. It would therefore seem to be both simpler and more economical, without detracting in any way from its Indian and democratic character, to have these Federal subjects brought within the purview of one Chamber representing the Governments of the federating Units, like the old German Bundesrat. There would, in the first place, be economy in money, which is a very important consideration in a poor country like India. There would secondly be economy in the time taken for the despatch of public business, which is also an important consideration in a country where provincial representatives will have to travel long distances to the Federal Capital. There would thirdly, be economy in personnel in not denuding the Provinces of such a large number of their best and most representative men from nation-building work and making them cast longing eyes to the more spectacular environment of Delhi and Simla. It would also be simpler in so far as procedure is concerned if we had a unicameral Legislature; none of the questions under this Head 3 would arise.

These are some of the reasons for which, under Head 1, I would strive to make the Federal Legislature in any case, whether unicameral or bicameral, as small as possible, and to devise measures which I think are practicable—which will serve, on the one hand, to satisfy the democratic sentiments of British Indian statesmen and the desire voiced by His Highness of Sangli not to be excluded from representation, on the part of the so-called smaller Indian States, whilst at the same time—as I hope to show later on to my fellow representatives on the Indian States Delegation—to provide a bridge for some valuable elements in the Dholpur-Pattani scheme.

If, however, British Indian sentiment—and I would be the last person to ignore a sentiment, if widely and strongly held, as was shown when last year I gave way in favour of two Houses out of deference to what I then understood was the unanimous British Indian sentiment—remains inexorable in favour of two Houses, then I submit that the powers and functions of both Chambers should be equal. There can be no analogy between the British House of Commons and House of Lords or the Council of State and the Legislative Assembly, and the Lower and Upper Houses of the future Indian Federal Legislature. I am constrained to use the words "Upper" and "Lower" as they have been used in this debate. They are really misnomers; and, in my view, other names should be used to describe the two wings of the Federal Legislature. The two Houses will not represent one the people and the other a hereditary aristocracy, but different points of view. I do not believe in one Chamber being fashioned with the set purpose of being a stabilising influence over the other. I would endeavour to make them both equally stable. If we adopt the bicameral principle, the Upper House will presumably represent the Units of the Federation, whether they be British Indian Provinces or Indian States, and the Lower the Federation as a whole. What is neces-

sary is that the highly technical and mainly administrative subjects, which it will fall to the Federal Legislature to consider, should be dealt with by those who can approach them with different sets of experience and knowledge. That is why I desire that such experience and knowledge should be distributed over the two Chambers so as to make them both equally important and valuable.

We must always keep before us a picture of the future state of affairs when we are discussing and deciding upon the Federal Structure. In the Provinces, there will be a complete autonomy with the responsibility of the Executive to the Legislature. It will be the Provincial Executive and the Provincial Legislature which will deal with matters affecting the day to day life of the ordinary individual. The Federal Executive and the Federal Legislature will, on the other hand, be dealing with administrative and what might almost be called technical matters. The Federal Structure need not and should not, therefore, be modelled on what the Provincial Structure may be; for the latter will be designed for purposes quite different from the former. As between the two Houses of the Federal Legislature, there will not be the same conflict of interests as between a democratic house and one representing the hereditary principle; but there will be need for adjustments between the two. I wish therefore—if we are to have two Chambers—to start them on a footing of absolute equality so far as the written constitution is concerned. I would not, therefore, exclude from the Upper House the power of initiating a Money Bill or amending a Vote of Supply.

It is possible, as has happened in other constitutions, that one Chamber, owing to its greater intrinsic merit, may gain superiority over the other—the Upper over the Lower or *vice versá*, but we must leave that to time and experience and the unwritten, but no less binding, law of custom and usage. It may be that in time one class of questions may come to be vested in one House and another in the other. It may be that the Government of the day may find one House with regard to any particular question more suited for being the initiating Chamber than the other. There will be further a transitional period, as Sir Provash Chunder Mitter said, before such matters settle down as definite features of our constitution. Question (iii), which is as to where the deciding voice is to be, does not therefore arise.

With regard to question (iv), if the principle of equality of the two Chambers is accepted, it necessarily follows that all Bills, including Money Bills, should be introduced in, and amended by, either Chamber, and that the function of voting Supply should be shared by both Chambers. So far as Bills, including Money Bills, are concerned, that function is even now shared by both the Houses of the Indian Legislature as at present constituted. The voting of supply, however, is, I understand, at present vested in the Lower House of the Indian Legislature alone. Given equality of the two Chambers, then logically the Federal Upper House should have the power of voting supply in the same way as the Federal Lower

House. In practice, also, I can see no disadvantages in this. The Federal Budget—which, by the way, will be much less complicated than the present Central Government of India Budget—can be introduced simultaneously in both Houses of the Federal Legislature. A time limit could be imposed on both, as it is now imposed on the one House, within which they should complete the voting. Following that there might be a short period which could be reserved for a Joint Session of both Houses to resolve any disagreements which may have become apparent in the course of the voting in either House. I realise that the Upper House, by refusing to pass the Annual Money Bill, could compel consideration of the expenditure policy of the Government; but that is cumbrous, and therefore not so effective as the power to vote on each item of Supply directly it comes up. I shall give a concrete example. A Member of the Upper House might consider that there was extravagance in the opening of new postal circles. He could raise that question more effectively and more conveniently on the Post Office Vote than when the whole Money Bill came up for consideration. Refusal to pass a Money Bill would require very grave reasons before such action could be justified. The result would be that, for the sake of small but necessary economies, it would not be considered worth while by the Upper Chamber to take such a drastic step. The Budget would be introduced in both Houses by the Government of the day, and the Government, being responsible to both Houses, would necessarily have a majority in each. Occasions for difference between the two Houses would never be such as could not be resolved by the Government, which, being responsible to the Legislature, would *ipso facto* have a majority in both Houses, as I have already said. A separate discussion of the Budget Heads in both Houses, however, would make the Government better acquainted with the trend of opinion in both. It is for this reason that I would prefer the function of voting Supply to be discharged separately by the two Chambers, instead of making a Joint Session even for this purpose a normal feature of the constitution.

Coming to (iv) (c)—when a joint sitting is necessary for the passage either of legislation or of grants in the event of a difference of opinion between the two Houses, the Joint Session, in my view, should be composed of an equal number of representatives of each house. I find myself practically in complete agreement with what Mr. Zafrullah Khan has so lucidly explained in this regard. I am given to understand that, even in the present Indian Legislature, whenever a Joint Committee of the two Houses is appointed to consider legislation other than Money Bills, an equal number of representatives from each House are put on the Committee. The powers of the two Houses of the present Indian Legislature are admittedly unequal in view of the exception in regard to finance, whereas we want the two Chambers of the Federal Legislature to have equality. All that I want, therefore, is that the present practice be continued, with this addition, that the principle of equal

representation be adopted in the case of all legislation, including Money Bills.

I do not hold with the view, as I have repeatedly stated, that one House should be a check on the other. As I have made it clear in the course of my speech and my previous utterances, my preferences are for a unicameral Legislature; but if you are going to have two Chambers the composition of which reflects different points of view, then I submit that both these Chambers have an equal concern in matters of Federal taxation.

If you will look at the subjects with which the Federal Legislature will deal, you will at once see that they will affect the Federal Units as whole units very intimately. Take, for example, legislation in regard to either Customs or Railways. A Federal Unit like Bombay or Madras or Hyderabad will have to examine such legislation from the point of view of its effect on the Unit as a whole, the interests of the individual inhabitants of Madras, Bombay or Hyderabad being subsidiary to and dependent on the interests of the Unit to which they may happen to belong. In this matter analogy is sometimes drawn from what obtains in other countries, and especially in those countries where unitary systems of government prevail; but such analogies are apt to be misleading. For where there is unitary government, the popular House must needs be the guardian of the purse; whereas, under a Federal Government of India, in so far as Federal subjects are concerned, it will be for the consideration of Federal Units as a whole how Federal taxation will bear on the people of those Units, in all the departments of Government, including those entrusted directly and finally to those Units. Here again, however, we are open to argument. If our British Indian colleagues, for sufficient [illegible] would have it necessarily so, we of the Indian States [illegible] pared to reconsider our position when Federal [illegible] discussion. It may be that, if a scheme of [illegible] adopted that is entirely acceptable to the States [illegible] our British Indian friends so insist—that [illegible] Money Bills be resolved in a Joint Session of [illegible] the two Houses by a bare majority. This [illegible] applies only to Money Bills and the [illegible] other legislative purposes we want the [illegible] of an equal number of representatives [illegible]

So far as (v) is concerned, I agree [illegible] hat ordinarily and technically [illegible] iovernor-General, but that the G[illegible] se a potent voice in the matter.

The answer to question (v) [illegible]

Sardar Ujjal Singh: Mr [illegible] er into any discussion [illegible] ieral Legislature and [illegible] subject at great length [illegible] the existing system [illegible]

any criticism or draw any inspiration from the existing Council of State, for the present Government of India Act gives such vast powers to the Governor-General that the Council of State has had no opportunity of asserting itself, and the provision of a Joint Session has, I believe, not once been tried.

I would like to deal with the points which come under Head 3 in the order in which you have placed them. With regard to No. (i), it is agreed generally that the assent of both Houses is necessary for the passing of any legislative measure and it follows that the powers of both Houses should be approximately equal. I would only make an exception with regard to the powers of these two Houses in connection with money matters; and this exception is generally adopted in most other constitutions, not only unitary constitutions but federal constitutions.

So far as money matters are concerned, I would like to give a few illustrations from present-day federations. Take first the Dominion of Canada, a Member of the British Commonwealth. There, Sir, Section 53, which has already been pointed out by various speakers, only says that—

> "Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons."

In Canada the powers of the two Chambers have not been definitely defined. The reason for this is that, under section 18, it is laid down that Canada will follow generally the British model. It says:—

> "The Privileges, Immunities, and Powers to be held, enjoyed, and exercised . . . ."

Dr. Ambedkar: That has no relevancy to this; it is privilege inside the House.

Sardar Ujjal Singh: I beg your pardon.

> "The Privileges, Immunities, and Powers to be held, enjoyed, and exercised by the Senate and by the House of Commons . . . ."

it does not mean the Members of the House of Commons.

Dr. Ambedkar: No, Sir. If you refer to the Preamble, you will see there that the Canadian Constitution lays down that the Canadian Constitution shall be similar to that laid down in the United Kingdom; and you will see that the relations between the House of Commons and the House of Lords are to be the governing principle in Canada, but the privileges of the House of Commons in Canada are not affected there.

Sardar Ujjal Singh: I beg to differ. Besides the Preamble, section 18 says:—

> "The Privileges, Immunities, and Powers to be held, enjoyed, and exercised by the Senate and by the House of Commons and by the Members thereof respectively shall be

such as are from Time to Time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the Members thereof."

So in Canada the powers of the two Houses are not definitely defined with the exception of Money Bills, as to which it is laid down that Money Bills shall originate in the Lower House. Otherwise it implies that the powers are equal, but they are to be defined from time to time by the various Acts of the Canadian Parliament.

Then, if you come to the Australian Constitution, section 53 again lays down a different principle for money Bills. Section 53 reads:—

"Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate."

Then again:—

"The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws."

So that here again exception is made with regard to Money Bills.

Then, coming to modern constitutions—those of Czechoslovakia and the German Republic—in Czechoslovakia, sections 41, 42, 43 and 44 lay down the procedure. Section 41 lays down:—

"Proposals for legislation may originate either with the Government or in either Chamber.

2. Every proposal made by Members of either Chamber shall be accompanied by an estimate of the financial issue involved and by a proposal for the defraying of the necessary cost.

3. Proposals of the Government for Budget and Army Bills must first be presented to the Chamber of Deputies."

Section 44 says:—

"A measure passed by the Chamber of Deputies shall become law, despite an adverse decision of the Senate, if the Chamber of Deputies declares, by a majority of 50 per cent. of all its members, that it adheres to its first decision.

any criticism or draw any inspiration from the existing Council of State, for the present Government of India Act gives such vast powers to the Governor-General that the Council of State has had no opportunity of asserting itself, and the provision of a Joint Session has, I believe, not once been tried.

I would like to deal with the points which come under Head 3 in the order in which you have placed them. With regard to No. (i), it is agreed generally that the assent of both Houses is necessary for the passing of any legislative measure and it follows that the powers of both Houses should be approximately equal. I would only make an exception with regard to the powers of these two Houses in connection with money matters; and this exception is generally adopted in most other constitutions, not only unitary constitutions but federal constitutions.

So far as money matters are concerned, I would like to give a few illustrations from present-day federations. Take first the Dominion of Canada, a Member of the British Commonwealth. There, Sir, Section 53, which has already been pointed out by various speakers, only says that—

> "Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons."

In Canada the powers of the two Chambers have not been definitely defined. The reason for this is that, under section 18, it is laid down that Canada will follow generally the British model. It says:—

> "The Privileges, Immunities, and Powers to be held, enjoyed, and exercised . . . ."

Dr. Ambedkar: That has no relevancy to this; it is privilege inside the House.

Sardar Ujjal Singh: I beg your pardon.

> "The Privileges, Immunities, and Powers to be held, enjoyed, and exercised by the Senate and by the House of Commons . . . ."

it does not mean the Members of the House of Commons.

Dr. Ambedkar: No, Sir. If you refer to the Preamble, you will see there that the Canadian Constitution lays down that the Canadian Constitution shall be similar to that laid down in the United Kingdom; and you will see that the relations between the House of Commons and the House of Lords are to be the governing principle in Canada, but the privileges of the House of Commons in Canada are not affected there.

Sardar Ujjal Singh: I beg to differ. Besides the Preamble, section 18 says:—

> "The Privileges, Immunities, and Powers to be held, enjoyed, and exercised by the Senate and by the House of Commons and by the Members thereof respectively shall be

such as are from Time to Time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the Members thereof."

So in Canada the powers of the two Houses are not definitely defined the exception of Money Bills, as to which it is laid down that Money Bills shall originate in the Lower House. Otherwise it implies that the powers are equal, but they are to be defined from time to time by the various Acts of the Canadian Parliament.

Then, if you come to the Australian Constitution, section 53 again lays down a different principle for money Bills. Section 53 reads:—

"Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate."

Then again:—

"The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws."

So that here again exception is made with regard to Money Bills.

Then, coming to modern constitutions—those of Czechoslovakia and the German Republic—in Czechoslovakia, sections 41, 42, 43 and 44 lay down the procedure. Section 41 lays down:—

"Proposals for legislation may originate either with the Government or in either Chamber.

2. Every proposal made by Members of either Chamber shall be accompanied by an estimate of the financial issue involved and by a proposal for the defraying of the necessary cost.

3. Proposals of the Government for Budget and Army Bills must first be presented to the Chamber of Deputies."

Section 44 says:—

"A measure passed by the Chamber of Deputies shall become law, despite an adverse decision of the Senate, if the Chamber of Deputies declares, by a majority of 50 per cent. of all its members, that it adheres to its first decision.

Should the Senate reject a Draft Bill passed by the Chamber of Deputies by a majority of all its members, the Bill becomes law provided that the Chamber of Deputies re-enacts its decision by a three-fifths majority of all its members."

In the German Constitution, article 74, the Reichsrat, the Upper House, has practically no powers. It says:—

"The Reichsrat"—(that is, the Upper House)—"has the right of protest against a law passed by the Reichstag.

This protest must be lodged with the Federal Government within two weeks after the final vote in the Reichstag, and must be supported by reasons, presented within another two weeks at latest.

In case of a protest, the law shall be brought before the Reichstag for further consideration. Should the Reichstag and the Reichsrat not arrive at an agreement, the President of the Federation may, within three months, order an appeal to the people upon the subject in dispute. Should the President not make use of this right, the law does not come into operation. Should the Reichstag decide by a two-thirds majority against the protest of the Reichsrat, the President must either promulgate the law within three months, in the form approved by the Reichstag, or order an appeal to the people."

In the case of Money Bills, in practically every constitution a provision is made that they should originate in the Lower House, and in many constitutions the Lower House has a predominant voice. In the Australian Constitution it is practically the Lower House that has the final say. I would, therefore, suggest that, with regard to Money Bills, the initiative should vest in the Lower House alone; secondly, that the Upper House should not amend a Money Bill, but, as in Australia, should submit suggestions to the Lower House which the Lower House might consider; and, thirdly, that in order to allow those suggestions of the Upper House full consideration by the Lower House, instead of a Joint Session, the device which has been proposed (and with which I agree) with regard to other legislation—Section 44 of the Czecho-slovakian Constitution—may be adopted. This Section also gives more or less the same opportunity for consideration of a Bill as it is proposed that the Joint Session should do. After reading this Section it will be clear that full opportunity is given to the Members of the Lower House to consider the proposals of the Upper House with regard to the Bill. Then, if the Lower House passes the measure again by a three-fifths majority, it becomes law. Therefore, I would suggest that, with regard to the Finance Bill, the Lower House should have an opportunity of reconsidering any suggestions that the Upper House may have made; and then, if the Lower House again passes that Bill by a particular majority, say three-fifths, the Bill ought to be considered as passed, and there should be no need for a Joint Session.

Coming to (iv)—I have said that all Bills, except Money Bills, may be introduced in either Chamber. With regard to (b), I think that the function of voting Supply should vest with the Lower House under the conditions that I have stated. With regard to (c), I think that differences between the two Chambers should be reconciled in all matters excepting Finance, in which I would like the adoption of Section 44 of the Czechoslovakian Constitution, viz., a Joint Session of all the Members of both Chambers sitting together and deciding by a bare majority of the Members present. I have carefully studied the views which have been put forward with regard to the necessity of providing for a two-thirds majority or an absolute majority. It is perfectly true that, if the number of Members of the Lower House is three hundred and of the Upper House one hundred and fifty, a bare majority would mean that, if all the Members were present and if two hundred and twenty-six out of four hundred and fifty Members were in favour of that measure, the measure could be carried. But the question should be examined from another point of view. Supposing that the legislation is carried through the Lower House by a majority of, say, two-thirds; then two hundred Members of the Lower House would be in favour of that measure and one hundred against it. Supposing, for example, that it is a reactionary measure; in that case one hundred Members of the Lower House are not going to make common cause with the other Members of the Lower House, but are likely to make common cause with the Members of the Upper House, more or less representing a conservative view. So that those who insist upon a particular majority in a Joint Session pre-suppose that, at the Joint Session, the Members of the Lower House will act individually as representing one Chamber, and the Members of the Upper House will also act individually as representing the other Chamber. There is no clash between one Chamber and the other. It will be a difference of opinion, and it may be an honest difference of opinion, on a particular majority, say two-thirds, in a Joint measure. Therefore, if the device of requiring a particular Session, were adopted, the effect of it would be that, even if a popular measure were carried through in the Lower House by a three-fourths majority, it might have no chance of acceptance in a Joint Session. The Upper House should certainly exercise a stabilising influence, but it should not be a block in the progress of India and it should not be allowed to make a democratic institution a farce.

With regard to (v), technically speaking it will be the Governor General who will call for such a Joint Session; but in all cases a Joint Session should be convened except when the Mover of the Bill does not wish to press his measure and allows it to lapse.

With regard to (vi), even in South Africa some device is adopted before a Joint Session is resorted to, namely, that the measure should be passed again in a second Session of the Lower

House before the machinery of Joint Session is put into operation. In my opinion, some time ought to elapse before a Joint Session is called. On the last point I quite agree with many of my friends that provision for all these measures should be made in the constitution, and it should not be left to any convention or custom.

H.H. The Maharaja of Bikaner: My Lord Chancellor, I will confine myself merely to making a couple of observations under Head 3, and will, when speaking later on Head 1, ask to be permitted to make a few general observations about the standpoint of the States generally in regard to the matters coming before us.

May I say, first, that the Princes and States have no desire to render the work of the future Federal Government impossible, and that they are most anxious in every reasonable manner possible to co-operate with British India and to avoid any conflict. We want a constitution which will work, where the components will be parts of a Federal whole, not divided into States on the one side and British India on the other, but members of one family, working together in peace and harmony.

In the observations made regarding Head 3, it has to be pointed out that we have yet to discuss constitutional safeguards which are matters of especial importance to the States. We have also to discuss the subjects included in the field of Federal finance; and the views of the Indian States Delegation expressed to-day are subject to any reconsideration that may be necessary after we have dealt with these two points. Therefore, although it is hardly necessary here—still, in view of the alarm created in the minds of the Princes and States in India regarding the subjects now under discussion and other details, it is perhaps as well to add on this occasion that our views under Head 3 are also subject to two obvious guarantees, namely (1), that the Federal Government will derive its revenues by "indirect" taxation and will not be empowered to impose "direct" taxation on the Indian States or to demand any fresh contributions; and (2), that there will be no discrimination against the States and their subjects in regard to taxation or in any other matter—a point on which I venture to think all will be agreed. I need only say further that the States are deeply interested in the establishment of a stable and sound Federal Government.

Dr. Shafa'at Ahmad Khan: Lord Chancellor, after what has been said by Sir Muhammad Shafi and Sir Tej Bahadur Sapru, I need not detain this Committee with any elaborate discussion of the various problems. I would merely like to emphasise two or three points. The first, Lord Chancellor, is that, in framing a constitution for the Upper and the Lower Houses, we must keep one aim constantly in view. It is this—that the Upper House is going to be the custodian of the interests of the States of British India and of Indian India. Consequently the Upper House must be such as will be able to protect and safeguard those interests. So it is from this point of view, Lord Chancellor, that we should

discuss the question of federation as regards the two Houses. The States, both from British India and from Indian India, will have certain rights defined in the constitution. There will be certain subjects reserved for the States and others reserved for the Federal Government This will be a check on the power of the Federal Government in its relation to the Provincial Governments; but there will be yet another check, which I may call the internal check. This will exist in the form of a strong and influential Upper House. Therefore, we need not merely the check in the form of division of subjects, but also the check imposed by the presence of a really influential and representative Upper House. This internal check on the power of the Federal Government would not be in the sense of antagonism, not in the sense of conflict, and not in the sense of any clash between the two component elements of the Federation and the Central Government, but in the sense of the protection of the interests of the component Units. So it is from this point of view, Lord Chancellor, that I look at this question.

The other point to which I would like to draw your attention is that our Upper Chamber, which I should call the Senate, will be an altogether different body from the Council of State of the present time. It will be different and it ought to be different

Chairman: I do not think you need labour that point at any length, because I do not think anybody would dispute what you say on that head.

Dr. Shafa'at Ahmad Khan. The Upper House will, in my opinion, contain the ablest and the most influential leaders both from British India and from the Indian States. I am certain that, when the Upper House develops its powers and acquires influence, the Indian States will send their ablest representatives and their most experienced Ministers to the Upper House. Consequently the Upper House will become, if I may say so, the foundry in which public opinion is melted and cast. It is from this point of view that I envisage the constitution of the Upper House.

Lord Chancellor, the question of the power of the Upper House is therefore of supreme importance. One point has been raised to-day by Sir Akbar Hydari. He said that the two Houses should have co-ordinate and equal powers. I do not wish to commit myself on this point at this stage. I would simply like to point out that, if they are going to have co-ordinate powers, then there will have to be responsibility of the Ministers to both the Houses or complete irresponsibility, in other words, presidential form of government. That has been the practice in the United States of America and in Switzerland. In these two countries there is no responsibility of Ministers and the system is entirely different from what is called the Parliamentary system. Therefore this question can only be discussed if and when we have decided the question of the responsibility of Ministers to one House or to both Houses.

Sir Akbar Hydari: I think Sir Tej Bahadur Sapru made it clear that they would be responsible to both.

Sir Tej Bahadur Sapru: No.

Sir Akbar Hydari: That the defeat of the Ministry could be only by . . . . .

Sir Tej Bahadur Sapru: That was with regard to a vote of no-confidence only.

Dr. Shafa'at Ahmad Khan: Then, Lord Chancellor, the other question is whether the Upper House should have the power to amend or whether it should have merely the power to suggest amendment. From a practical point of view I admit that there is not much material difference; but I should prefer to get this practice regularised and formalised instead of leaving it in the unsatisfactory position in which it now is in the Australian Constitution. I believe that the report on the working of the Australian Constitution which has just been published will throw further light on the working of the Senate in Australia. A number of suggestions for amendment were made by the Australian Senate, but they did not exercise that influence on the Lower House which they would have exercised if the position had been legalised and the power of the Senate had been definitely affirmed and explicitly stated in the constitution itself. From this point of view, therefore, I think it would be better if the Upper House were given this power explicitly in the constitution. I do not think there is really much material difference; but it would make a difference ultimately in the actual day-to-day practical working of the constitution of the new India.

The other point is with regard to a possible deadlock between the two Houses. In all constitutions you must have—to use an Americanism—an emergency exit from a deadly deadlock; and for this emergency exit various provisions have been made and various remedies have been suggested. My humble opinion is that, when we are studying any constitution, we must see whether that constitution has actually worked well or not. It is not enough to see whether there is such and such a provision in the constitution, but we must go further and see how that provision has actually worked. The second point I should like to emphasise, therefore, is that, when drawing analogies, we must be very careful to pay regard to the similarity of conditions in the various countries.

I have the greatest possible respect for the experience and knowledge of Sir Tej Bahadur Sapru, but on this point I beg to differ from him. I believe that the South African Constitution is not and really cannot be a good model for us, even on this point. I hold this view because the South African Constitution is essentially a unitary constitution. It is framed with the express and avowed object of drawing all the powers of the Provinces into the fold of the Central Government. The original idea, of course, was to have a true and genuine federation; but when the Convention

met in 1908, the federation was transformed into a union, with the result that, at the present time, the Provincial Governments in South Africa are virtually glorified local bodies, and the proposal has now been made that even the small powers they possess should be taken away from them. The South African Constitution, I beg to submit, is therefore not really a very good model for us.

If we want a pattern suitable for India, I suggest that we must go to the constitutions of countries the conditions of which are similar to ours; and the constitutions which I submit can really help us are constitutions such as those of the United States of America, of the old German Empire and of Australia. As I have already emphasised, however, it is important to see how the various provisions actually work in practice. We must ask the question which every pragmatist asks—"How does it work?"

The Australian Constitution has failed utterly so far as the Senate is concerned. The recent report on the working of the Australian Constitution admits that the Senate has proved utterly useless and powerless so far as protection of the rights of the various States is concerned. Consequently, when we want to apply some of the provisions of modern constitutions, I beg to submit that we should apply only those provisions which were passed to deal with conditions analogous to those in India. From this point of view I submit that it would be better, in the case of a deadlock, not to follow the South African model, but to follow the Australian model, or—as my friend, Sardar Ujjal Singh, said just now—the model of the Czechoslovakian or German Constitutions. I might also cite the provisions of the British Parliament Act of 1911 in case of deadlock. So far as South Africa and Australia are concerned, they do not make any distinction in the case of deadlock between Money Bills and ordinary Bills. In the case of Money Bills, I think the time will have to be shortened to a fortnight or a month, and within that time a joint conference between the Upper and Lower Houses must be held; but, in the case of ordinary Bills, I should be inclined to copy the provision of Section 57 of the Australian Act as it stands.

Sir Tej Bahadur Sapru: Do you suggest that, following the Australian model, there must be a dissolution before a Joint Session takes place? That is of the essence of the Australian model.

Dr. Shafa'at Ahmad Khan: I would not go so far as that; my point is that I want to interpose delay, and sufficient delay. The delay imposed in the South African Constitution is not sufficient for my purpose. But I do not want any dissolution; I merely want a substantial delay.

Sir Tej Bahadur Sapru: In other words, instead of three months you want six, or instead of six months you want nine; but you do not want to go the whole length of the Australian Constitution and have a dissolution?

Dr. Shafa'at Ahmad Khan: The essence of that Section is that there should be sufficient delay to prevent the matter being considered from a party point of view.

Mr. Joshi: You think the 1911 British Act is simpler and is to be preferred?

Dr. Shafa'at Ahmad Khan: I only make that suggestion.

Dr. Ambedkar: The views which have been expressed so far have struck one note which I think is common to all; and that is, that in regulating the relations of the two Houses in the future Constitution of India, there should be equality of status, equality of power, granted to them, except of course in such small and minor matters as the right of initiative with regard to Money Bills and the right of voting Supply. Bearing that, the general consensus of opinion, I think, was that the two Houses should enjoy equality of position.

Now, in all humility and with all respect to the gentlemen who have spoken before me, I must say that I cannot agree with their views. The reason for the difference of opinion that exists between myself and them appears to me to arise from the simple fact that we take a totally different view of the functions and the purposes of the Second Chamber. I could quite understand the views of those gentlemen who propounded yesterday the proposition that the two Houses must enjoy co-equal powers if our Legislature were so constituted that each Chamber represented, to use ancient language, separate Estates of the Realm. If the Lower House were composed of classes which were not represented in the Upper Chamber, and if the Upper Chamber were composed of classes which were not represented in the popular Chamber, then there would be something to say for a view of the sort that was expressed yesterday. But, if our Legislature were constituted on the plan of what I call separate Estates of the Realm, I, for one, would not give my consent to a bicameral Legislature; for, speaking for the masses—I am a rival of Mahatma Gandhi in this respect—speaking for the masses, I could not consent to such a Legislature, and thereby consign their destiny to a government working under a system of this kind and thus—to use an expression of the late Lord Asquith—functioning under a system of false balances and loaded dice.

As a matter of fact, the Houses of our Legislature, unless I am mistaken, are not going to be constituted on the basis of separate representation of separate Estates. If I understand correctly the composition of the future Legislature, I take it that the Lower Chamber will be a popularly constituted Chamber—a Chamber which will represent each and every class, each and every shade of public opinion. That being so, I submit that we cannot have a Second Chamber which would claim to be its rival or which could claim to have co-equal status. That being my view, I submit,

Lord Chancellor, that, so far as the question propounded in sub-head (ii) of Head No. 3 is concerned, I would answer it by saying that the decisive voice must be vested in the Lower Chamber.

Chairman · Would you put that in the constitution, Dr. Ambedkar?

Dr. Ambedkar: Yes. I think it could be done.

Chairman · It could be done; but would you favour it being done?

Dr. Ambedkar Perhaps you would be kind enough to give me time to deal with that later on This must particularly be so in the case of Finance Bills The Second Chamber, in my opinion, may have the power to make suggestions for the consideration of the Lower House, which the Lower House may accept if it likes; but the Second Chamber shall not only have no power to initiate a Finance Bill, but it shall not have the power to amend it; and a Finance Bill must become law, as passed by the Lower House, even if it was rejected by the Upper House.

Now, I recognise that the proposal which I have made appears to be a very radical proposal—in fact, I think it might be described as a revolutionary proposal; but, My Lord Chancellor, if so, it is only because yesterday, when our learned colleagues Sir Tej Bahadur Sapru and Sir Muhammad Shafi dealt with this question, they did not refer to some of the most modern constitutions. It was a surprise to me that they should have confined themselves to drawing illustrations from the relatively ancient Constitutions of the Dominion of Canada, Australia, or South Africa. The Canadian Constitution was framed in 1867, the Australian in 1901, the South African in 1909. I do not know why they did not consider the constitutional relations that exist between the House of Commons and the House of Lords here. I do not know why they did not consider the relations that exist, for instance, between the two Houses in Ireland; nor do I quite understand why they forgot to consider the proposals of the Bryce Committee. If they had done so, I am sure that the surprise with which this proposal of mine has been received by members of this Committee would not have existed; but, as they have not done so, I would venture to support my proposal by citing precedents for it. Now, my proposal is exactly the proposal that is embodied in the Parliament Act of 1911. There it is provided that, so far as a Money Bill is concerned, the House of Lords may consider, but the House of Commons is supreme; and it is provided in the Act that when a Money Bill is considered and passed by the House of Commons it shall become law, notwithstanding the absence of consent of the House of Lords, provided His Majesty gives his Assent to the Bill. Again, My Lord, this is the relationship that is laid down between the two Houses, so far as Money Bills are concerned, in

the Irish Constitution. Section 35 of the Irish Constitution says:—

> "Dáil Eireann shall in relation to the subject matter of Money Bills as hereinafter defined have legislative authority exclusive of Seanad Eireann."

Then Article 38 says that—

> "Every Bill initiated in and passed by Dáil Eireann shall be sent to Seanad Eireann and may, unless it be a Money Bill, be amended in Seanad Eireann,"

and so on,

> "but a Bill passed by Dáil Eireann . . ."

and then the rest follows that Article.

The next authority that I would cite in support of my proposition is the recommendation of the Bryce Committee. Now, as all of us know, this was a most representative Committee—a Committee the membership of which was drawn both from the House of Commons and from the House of Lords—and the Committee came to the unanimous conclusion that, at least so far as Money Bills were concerned, the provisions embodied in the Parliament Act of 1911 were right and proper.

Then, My Lord, I would cite a third authority in favour of this proposition. The Report of the Bryce Committee and the recommendations made by it were not shelved; they were considered by the Coalition Government of 1922. Resolutions were moved (I am glad to see that Lord Peel is here) showing what action the Government of the day was prepared to take upon the Report of the Bryce Committee. The Resolutions were placed before Parliament on the 11th July, 1922. The Fourth Resolution reads as follows:—

> "That while the House of Lords shall not amend or reject Money Bills, the decision as to whether a Bill is or is not a Money Bill, or is partly a Money Bill and partly not a Money Bill, shall be referred to a Joint Standing Committee of the two Houses, the decision of which shall be final."

The principle recommended by the Bryce Committee, that a Money Bill shall be the exclusive concern of the House of Commons, was accepted and affirmed by these Resolutions. Let me here quote the speech made by Viscount Peel, then the Secretary of State for India, on these Resolutions. In moving the Resolutions he said that the Resolutions were a general sketch laying down principles only. He went on to say that the Second Chamber should not have equal power to, or become a rival of, the House of Commons, nor have the power of dismissing Governments or making the Executive equally responsible to both Chambers.

I think that I have given sufficient authority in support of the proposition which I have placed before this Committee for its consideration.

Lord Peel: May I suggest that that was a Coalition Government?

Dr. Ambedkar: It was a Coalition Government.

Lord Peel: In a Coalition Government you cannot say everything that you want to say.

Dr. Ambedkar: Your Lordship may have made mental reservations—I cannot say—but there it is. The Coalition Government was a Government in which more than one Party had joined. Therefore, the statement made in the name of the Coalition Government was a statement which had the support of more than one Party, including Lord Peel. I submit that I have cited sufficient authority to show that the proposition that I have placed before this Committee is not a revolutionary proposition.

Sir Tej Bahadur Sapru: May I ask Dr. Ambedkar if he will give a reference to any federal constitution to support his point of view? England is not a federation, and Ireland is not a federation.

Dr. Ambedkar: That is so.

Sir Tej Bahadur Sapru: The Bryce Committee had nothing to do with a federation.

Dr. Ambedkar: My reply is that, unless your federal constitution was so composed that the Upper House exclusively represented some other interests not represented in the Lower Chamber, the proposition would stand. This has nothing to do with the form of the Government, whether it was unitary or federal.

Sir Provash Chunder Mitter: I should like to ask one question. The House of Lords was a hereditary House. Was not the Irish Upper House one at that stage also?

Dr. Ambedkar: I am submitting that even the House of Lords, which is a most ancient House, with all the dignity, traditions and privileges behind it, consented to this revolutionary change. What are the Indian States as compared with the House of Lords, if I may submit it with all due deference?

H.H. The Maharaja of Bikaner: With all due respect to the great Peers of the British Realm, the States possess sovereignty any territory which is not British territory, whereas even the most important Peers of the Realm and their estates are in a totally different position.

Dr. Ambedkar: The sovereignty is subject to the influence and power of the House of Lords.

Sir Muhammad Shafi: May I ask Dr. Ambedkar what are the privileges of the House of Lords?

Dr. Ambedkar: Taking this position, the next thing that I should submit is that the constitution should contain a definition

of what a Finance Bill is. It may be defined, as has been suggested, in the way in which it is defined in the Irish Constitution, which is not different from the one given in the Parliament Act of 1911.

The next point that I would submit, arising out of the matter, is that a Member in charge of a Bill should have the privilege of claiming that his Bill is a Finance Bill. If there is a dispute between the two Houses as to whether or not a Bill claimed to be a Finance Bill is a Finance Bill, I submit that the dispute should be resolved by the decision of a Joint Finance Committee of both Houses, in which each House should be represented by a number of Members proportionate to its strength, and in which all parties should also be represented according to their strength.

Sir Maneckjee Dadabhoy: You want to make a departure from the existing practice.

Dr. Ambedkar: Very much so.

Mr. Zafrullah Khan: If the existing practice were satisfactory we would not be here.

Dr. Ambedkar: The next matter to which I want to come is non-financial Bills. In the case of non-financial Bills I am prepared to modify the principle applicable to Finance Bills, but for only two purposes. First, the Second Chamber may have power to revise and amend non-financial Bills brought up from the Lower House, subject to the proviso that no amendment shall be made by the Second Chamber which is of a financial character. Secondly, the Second Chamber will have power to hold up, and to enforce so much delay (and no more) in the passing of a non-financial Bill into law, as may be necessary to prevent hasty action, or as may be needed to enable the opinion of the electorate adequately to be expressed upon it. In view of this, my answer to the question propounded in the sub-head dealing with non-financial Bills is that the Upper House should have the right to amend a non-financial Bill. If the amendments are accepted by the Lower House, well and good; but if they are not accepted, then the Constitution should provide that, if a non-financial Bill is passed three times by the Lower Chamber in three different sessions of its life, it shall become law, notwithstanding the opposition of the Second Chamber. Lastly, I submit that these relations between the two Houses should be embodied in law, and should not be left to convention. That is all that I have to submit.

Mr. Iyengar: I had not any intention of intervening in this debate on the questions that are put under Head 3, because, on the footing that there are to be two Chambers, I was prepared to agree more or less totally with what Sir Tej Bahadur Sapru said would be the position of those on this side of the House; but the issue as to whether there should be two Chambers or only a single Chamber has again been canvassed, and as there has been so much criticism levelled against the definite statement which Mahatma

Gandhi made to this Committee in regard to the preference of himself, and those of his way of thinking, for having only a single Chamber, I deem it necessary, with your permission, to restate the position in favour of a single Chamber under the constitution that we have to devise for the country.

Lord Chancellor, nothing that was urged in favour of two Chambers yesterday has served, so far as the arguments then put forward were concerned, to shake the position that a single Chamber would satisfy all the purposes for which the Second Chamber was demanded and was desired. My friend, Sir Muhammad Shafi, in stating the case for a Second Chamber, which he said was overwhelming, gave only two reasons for that, as I understood it. The first reason was that he was not aware of any federal constitution in which there were not two Chambers. The second was that, in his experience as Leader of the Council of State, the Council of State had exercised a steadying influence on the deliberations of the Lower Chamber in the present Indian Legislature.

There was a third reason also which was put forward, namely, that with the cry of independence in the air in India, he considered it very necessary that India should not fall into the methods of Russian democracy.

Sir Muhammad Shafi: That was not the third reason; that was only a development of the second reason. The third reason was that opinion in all political circles, as mentioned by Pandit Malaviya, was unanimous in support of a bicameral Legislature.

Mr. Iyengar: I submit, My Lord, so far as that statement is concerned, that the speeches and pronouncements that have been made here, beginning with Mahatma Gandhi, and ending, if I may say so, with my friend, Mrs. Subbarayan, make it clear that there was no such unanimity in favour of a Second Chamber as they thought there was. As far as the question of a Second Chamber is concerned, I do not think the position could have been put in better form for the purposes of our dispassionate discussion—a discussion in which we should not be bound merely by precedents or pre-conceived notions—than it was put by Mahatma Gandhi. Mahatma Gandhi said this:—

> " I am certainly not enamoured of and I do not swear by two Houses of Legislature. I have no fear of a popular Legislature running away with itself and hastily passing some laws of which afterwards it will have to repent. I would not like to give a bad name to, and then hang, the popular Legislature. I think that a popular Legislature can take care of itself; and, since I am now thinking of the poorest country in the world, the less expenses we have to bear the better it is for us. I do not for one moment endorse the idea that unless we have an Upper Chamber to exercise some control over the popular Chamber the popular Chamber will ruin the country. I have no such fear; but I can

visualise the state of affairs when there can be a battle royal between the popular Chamber and the Upper Chamber. Anyway, whilst I would not take up a decisive attitude in connection with it, personally I am firmly of opinion that we can do with one Chamber only, and that we can do with it to great advantage. We will certainly save a great deal of expense if we can bring ourselves to believe that we can do with one Chamber."

My Lord, the argument that you do not find to-day any federal constitution without two Chambers is, I submit, no argument at all. The reasons why there should be two Chambers were not elucidated by my friend, Sir Muhammad Shafi, but we get them elucidated by Sir Tej Bahadur Sapru in his speech. I think his main point was that, so long as you require the representation of States and Governments as well as of the people of the States, you must have one Chamber to represent States and Governments and another Chamber to represent the people of those States. Now, all that I can say, so far as that is concerned, is that neither the Federal Structure Sub-Committee when it met last year, nor the Committee this time, has yet accepted the principle that the Lower House should be constituted upon a direct adult suffrage representing the people of Indian States as well as British Provinces together. Paragraph 25 of the Report of the Federal Structure Sub-Committee says this:—

"The general aim of Federal constitutions has been to provide one legislative Chamber which represents primarily all the federating units as such, often on a basis of equal representation for each unit, and a lower chamber which represents, primarily, the population of the whole federal area: and in applying this plan, constitution-makers have commonly provided that the representatives of the federating units in the distinctly federal chamber shall be chosen by the Governments or Legislatures of those units, while the representatives of the population of the federal area shall be returned by some more popular form of election: it has commonly been provided further that the distinctively federal chamber should be the smaller of the two."

And this is what I want to emphasise to the Committee:

"But India's own practical needs and conditions must be the governing factors, and no constitution, however theoretically perfect, and however closely modelled upon precedents adopted elsewhere, is likely to survive the tests of experience unless it conforms to the needs and genius of the country which adopts it, and unless it is capable of adaptation and modification as the character of these needs is proved in the working. To meet these needs the federal organisation must be conceived not as a rivalry of conflicting

elements, but as a partnership for the devising and efficient application by common consent of policies required in the common interest. For such a partnership the stability of the Federal Government is of the first importance."

Sir Tej Bahadur Sapru: May I ask you whether you agree with what you have read?

Mr. Iyengar: Yes, certainly.

Sir Tej Bahadur Sapru: Very well, then, there is no difference.

Mr. Iyengar: No; but this does not conclude the question of Second Chambers. On the other hand, I submit, My Lord, that the question as to what is suited to our needs and requirements *should be answered without reference to precedents.* The principal reason why in our country we want a single House of Legislature and not two Houses, is that the latter arrangement involves a needless multiplication of machinery, that it will promote conflict, and, above all, that it will inflict a needless and great expense upon the people of the country. That is the ground upon which Mahatma Gandhi very clearly stated it when he put the position:—

> " Since I am now thinking of the poorest country in the world, the less expenses we have to bear the better it is for us."

With regard to that, I have not heard a single argument upon which we can say how this expense can be saved.

Dr. Ambedkar: But I thought last time you supported a bicameral Legislature.

Mr. Iyengar: No, I did not. I am sorry to say it, but my friend is entirely mistaken. All I can say, Sir, is that every purpose *for which a Second Chamber could be devised and constituted* can be provided for by adopting a single Chamber and by adopting such expedients as are necessary to provide for the purposes for which a Second Chamber is proposed to be brought into existence. On that I submit, My Lord, that Mahatma Gandhi has put the position perfectly fairly. Therefore I feel we should not go wrong if we tried the method of having one Chamber only. Make it as perfect as human ingenuity can, by all means, but be satisfied with only one Chamber. Therefore I do not think we should treat the question of adding a Second Chamber as *res judicata*, because I find that my friend, Sir Akbar Hydari, once again definitely stated to this House that he was throughout in favour of only a unicameral Legislature, and that he assented to *the provision of two Chambers merely because he did not want* definitely to dissent on that.

Sir Tej Bahadur Sapru: May I know whether the Congress would accept the unicameral Legislature suggested by Sir Akbar Hydari?

Mr. Iyengar: The question whether any particular unicameral Legislature is a good one or not is dependent on the question of

what the composition of that Chamber may be. So far as that is concerned the Congress is perfectly clear as to what kind of unicameral Legislature it wants. Sir Akbar Hydari's support of the unicameral Legislature was not based on any particular composition he sought to give it.

Sir Maneckjee Dadabhoy: What was the decision of the All-Parties Conference on the matter?

Mr. Iyengar: I am going to answer that question. My Lord, I submit that, having in view the purposes for which a Second Chamber is required, namely the power of delaying hasty legislation and giving a suspensory veto on certain projects of legislation involving particular issues, and so on, it would be perfectly possible by means of suitable provisions with regard to the method of action of a single Chamber to achieve those purposes for which it is sought to bring a Second Chamber into existence at such huge expense and inconvenience in such a great continent as India.

Sir Tej Bahadur Sapru: May I interpose for one moment? Who is to provide the suspensory veto?

Mr. Iyengar: So far as the suspensory veto on legislation is concerned, I am sure that in respect of certain matters we may provide that a particular proportion of the Legislature may exercise a suspensory veto.

Sir Tej Bahadur Sapru: Not the Crown?

Mr. Iyengar: No, no. Both in the Nehru constitution, I may remind Sir Tej Bahadur Sapru, as well as in the Congress, both earlier and later, we have always provided that such a suspensory veto on legislation should be arranged for in respect of certain important communal or religious rights. I do not think, therefore, that, from the point of view of suspending or delaying action, a Second Chamber is necessary.

Sir Muhammad Shafi: Who is to exercise the veto and in what circumstances is it to be exercised?

Mr. Iyengar: The suspensory veto will be in terms of the clauses provided in the Fundamental Rights under the Nehru Constitution.

Sir Tej Bahadur Sapru: Is it or is it not a fact that the right of veto under the Nehru Constitution is given only to the Crown, and to no other body?

Mr. Iyengar: I am afraid my friend, Sir Tej Bahadur Sapru, is using the words in a technical sense. I am speaking of the suspensory veto in the sense that it is possible for a particular proportion of the Legislature to say that certain legislation shall not be passed because they have been given the right to stop or delay it.

Sir Maneckjee Dadabhoy: Who is to exercise that right?

Mr. Iyengar: The people who are of that opinion.

Sir Muhammad Shafi: What do you mean by "people"? Do you mean outsiders or Members of the Legislature?

Mr. Iyengar: I certainly yield to my friend, Sir Tej Bahadur Sapru, so far as the use of legal language is concerned. I am not certain whether what I refer to is correctly described as a suspensory veto or not; but I am not concerned with that. I am only concerned with making clear my own idea on the matter; and if I cannot clothe that idea in exact legal language, such as Sir Tej Bahadur Sapru wants to give it, I must plead as my excuse that I am not a practising lawyer. I will again plead with you to deal with the question from an independent and dispassionate standpoint We are not necessarily to be guided by what has been done previously.

The other question that I would like to mention in regard to *the relations of the two Chambers is one to which the Marquess of* Lothian referred yesterday in a question put to Sir Tej Bahadur Sapru.

Mr. Jinnah: I want to understand this point, Mr. Iyengar. You say that the bicameral system will be too expensive and will be a luxury for a poor country like India?

Mr. Iyengar: Yes.

Mr. Jinnah: Let us assume that it will be expensive. What provision do you wish to be embodied which will prevent, not only any measure dealing with communal or religious questions, but any other legislation of a vital character which, if it is passed in the midst of passion and party clash, may become law if there is no Upper Chamber? What machinery do you provide to safeguard against the hasty passing of other legislation in such circumstances?

Mr. Iyengar: I will try to answer that question in this way. So far as hasty legislation of a vital character is concerned, I take it that that has got to be defined very clearly in the constitution itself.

Sir Muhammad Shafi: That is no answer to the question.

Mr. Iyengar: It will provide that a particular majority is necessary or that a particular block can be made against hasty legislation of that kind. Ordinary hasty legislation—I mean, in the normal way—can always be dealt with by the powers which I presume you propose to vest either in the Governor General or in the Crown, whichever it is, by means of which he can always send it back to the Legislature for reconsideration. That power can always exist, *and I do not see why it is necessary that you should* interpose an intermediate body like the Upper Chamber to perform functions which I presume you are going to lodge in the Crown.

Mr. Jinnah: Though I am not a very great admirer of the Council of State as it is constituted at present, I think you will admit that there have been occasions when the Council of State

has made amendments to Bills which we passed in the Assembly, which, on further consideration, we thought were very reasonable.

Mr. Iyengar: I entirely agree, but I do not see why that function should not be performed, in so far as it relates only to technical considerations—and I believe we only accepted technical amendments for the improvement of legislation—by any Select Committee or even by the advisers of the Crown when they return legislation as being hastily or improperly drafted.

Sir Muhammad Shafi: The Crown can never be substituted for a Second House in regard to a matter like that.

Mr. Iyengar: I agree, but I consider the Upper House an impediment. That is all the difference.

Mr. Jinnah: That depends on the composition of the Upper House. If you like, when we come to the composition of the Upper House you can make it perfect, and you can make suggestions with regard to its powers. I was only trying to get at your point.

Mr. Iyengar: There is this other difficulty to which I was going to refer, and which I said was raised by something said by the Marquess of Lothian. So far as providing that, the moment there is a conflict between the Lower House and the Upper House, there must be compulsorily a Joint Session of both Houses in regard to the matter in dispute, is concerned, Lord Lothian pointed out that, in such cases, what happened elsewhere, and what would happen in India also, was that both Houses tend to become organised on party lines, with the result that party trouble and conflict between the two Houses is accentuated. If on every occasion we find that we are going to make a majority by a combination of both Houses whenever there is a conflict, that, he said, will lead to the organisation of both Houses on a party basis from the very start, and that will perpetuate the evils that are feared. My point is that that indicates that the case for a single Chamber instead of two Chambers is not disposed of by the mere fact that we are able to resolve differences between the two Houses in the summary manner in which they have to be resolved whenever emergency legislation or financial matters are in question.

Chairman: Could you kindly help me with regard to this, because I should like to have your views. Do you envisage in the future proceedings in an Indian Legislature that there will be two parties, or do you envisage that there may be a sort of group system?

Mr. Iyengar: I am hoping that there will be two parties. It may not immediately come about, but I hope it will come about within a very few years.

Chairman: And, in the interval, do you think there will be groups?

Mr. Iyengar: There may be groups. As we are proceeding to devise the composition of the Legislature, there will be, I am afraid, groups for some years.

Chairman. Because the problems of Southern India might be different from the problems of Northern India?

Mr. Iyengar: Yes, they might be different. So far as the problems of Provinces are concerned, I am sure that, whether you represent them by means of units or by means of a bloc of Members in the Upper or Lower Chamber, in a free democratic constitution members of a particular Province will try to protect the interests of that Province; and I certainly see the point, My Lord Chancellor, which you have made, that if you are going to have a two-party system the interests of Provinces may not exactly coincide with the interests of parties, which may be divided on non-provincial lines. I see that; but so far as I view the position of the Federal Chamber as it is now proposed to be constructed, I do not see that the question of conflict of provincial and national interests has emerged so far; and that is why, when I discussed Head No. 2, I said that we must be perfectly clear as to what we propose to do. If we have a Federal Constitution in which the Federal Authority is going to deal with national problems and also to exercise a certain amount of control over the Provinces, which are Units of that Federation, it may be then that the question of whether the Provinces should be represented in a separate Chamber or not will arise. But, so far as present indications go, I am not yet clear why we want a Second Chamber; and, as I have been repeatedly trying to make out, I do not see the force of the argument that, merely because there are two Chambers in other places, therefore we should have two Chambers here, or that, merely because we find that the States have agreed to the Federation on the basis of two Chambers, we should agree to it here. As a matter of fact, I find that it is not so; and therefore I desire that on this question we should consider what are the purposes to be subserved by a Second Chamber, and see whether they could not be dealt with by making suitable provisions in regard to the composition and powers of the Lower House.

(The Committee adjourned at 1-10 p.m. and resumed at 2-30 p.m.)

Mr. Iyengar: I do not think that I have very much to add. I wish to restate the case. If it is conceded that, in respect of voting Supply, it is the Lower House that should possess the power; if it is conceded that, in regard to Money Bills, the right of initiating legislation vests in the Lower House; and if, in respect of ordinary legislation, it is conceded that the moment that there is a dispute or a conflict the two Houses should sit jointly, deliberate, and settle the matter straight away—I do not see how that position differs in any essentials from having a single Chamber. Two Chambers sitting together to dispose of all these things straight away, the moment that there is a conflict, is as good as constituting both of them as one Chamber. As I pointed out, the necessary effect of that is to have party machinery in both Chambers, so that the same vote would be recorded. I find so far that no particular purpose has been stated that could be served by the Second Chamber

which the First Chamber would not serve. As I say, this proposition to have a Joint Session straight away really amounts to the proposition that both Houses should be virtually constituted into a single Chamber for all purposes.

The last thing that I want to say, My Lord, is this. Much has been said about the fact that all federal constitutions possess Second Chambers. I do not think it can be said that the experience of Second Chambers in federal constitutions has been as successful or as clear as would justify us in repeating it or as should prevent us from exploring other methods to secure what has been appropriately described in the Report as stability. There are other ways of finding it, and I do not see why we should be hide-bound by precedent. But, speaking on actual experience, I desire to quote the authority of two distinguished German constitutionalists, who have summarised the position in regard to the functions of a Senate in federal States in the following terms:—

> "The institution of a Senate in the constitutions of federal States, as just described, has failed utterly. No State has been successful in constructing a body representing the federal element in a pure and therefore effective manner. The fault lies in the fact that nowhere have the States forming the Federation been entrusted with co-operation in the work of the Central Government. In all cases the Second Chambers have been made directly or indirectly representative of the parties in the States, who are already enabled to send their representatives to the Chamber of Representatives."

I do not want to add to what I have already said, My Lord. I have only pleaded that, while we are open to argument, we feel that a Second Chamber is a luxury, and a very costly luxury, in the case of a poor country like India. That is all I have to say.

Suspension of Gold Payments in the United Kingdom.

Mr. Gandhi: Lord Chancellor, with reference to the very careful statement made by the Secretary of State yesterday, and in view of the whole-hearted support given by Sir Akbar Hydari to the proposals contained in the statement, I feel it to be my duty on behalf of the Congress to state its position.

Every thoughtful Congressman must sympathise with the British Nation in the crisis that has overtaken it; but I would be false to my trust if I did not express my surprise and sorrow over the manner of the action taken in India. I recognise my limitations; my acquaintance with financial matters is of a very elementary type. I must, therefore, leave the merits to the Congress experts for examination. But what pains me is the fact that the decision in India was taken over the heads of the Legislatures, such as they are, and that especially when, in this place, we are expected to contemplate an early establishment of full responsible government. This step taken by the Government of India is a striking and, in my humble opinion, unmistakable proof of the unbending

and unbendable attitude of the Government of India. Evidently, on matters of the most vital importance to the Nation, we are not yet considered fit to be consulted, much less to decide what is good for us. This is a view I must repudiate with all the strength I can command; and, in the circumstances, so far as the Congress is concerned, I am sorry I am unable to give the support which the Secretary of State asks for the measures taken in India.

Head 3 (resumed).

Mr. Gavin Jones · Lord Chancellor, This question of the powers of the Federal Legislature is intimately bound up with representation and the method of selection. If you will permit me, I will refer to and clarify a statement I made in my last speech in regard to indirect election. Lord Peel remarked that the question of indirect election had gone by default I do not think so. We very carefully considered the matter, and we did not agree to direct election for the Lower Chamber entirely in deference to public opinion We are very conscious of the strong arguments in favour of, and opposed to, indirect election, and we are very much impressed by the Government of India's Despatch, Sections 133 and 137, in which they very clearly point out the arguments in favour of and against indirect election.

I am not at all sure that if indirect election to the Federal Lower House is adopted, the State Legislatures will not be seriously affected; and also I am not altogether in favour of proportional representation. We entirely agree with what is said in the Government of India's Despatch, namely, that this a matter which should be carefully considered, and in regard to which the judgment of Indian opinion should have great weight.

We did not intend, however, entirely to abandon indirect election in a limited form; and I entirely agree with what Sir Provash Chunder Mitter has said in regard to the representation of the agricultural classes. I do not quite see how those agricultural classes are going to be adequately represented unless rural constituencies elect their members by indirect election. I think the question of the Mukhi system, put forward by the Marquess of Zetland, should be carefully considered; and I am in agreement with Sir Tej Bahadur Sapru in thinking that it is a great pity that the franchise was not taken up directly after the last Round Table Conference. I agree with Sir Provash Chunder Mitter that we should not give our final decision on these matters without examining the facts, and I think it is quite probable it will turn out that a mixed system of election will be the most suitable—indirect from the rural areas and direct from the urban and the special constituencies.

As regards the powers of the Federal Legislature, with all due respect to Dr. Ambedkar, it seems to me that all his arguments and analogies are based on, and refer to a unitary system of government. We all know what Dr. Ambedkar wants, and that is a

unitary system of government in which the popular House should prevail.

Dr. Ambedkar: I do not say that at all; that is a wrong interpretation of my view.

Mr. Gavin Jones: At any rate, Dr. Ambedkar, I think your arguments were not relevant to a Federal Government, and it is a Federal Government that we are endeavouring to create here; and it is the only kind of Government that we can create.

I must say I was very surprised to hear Mr. Iyengar's speech in regard to a unicameral Legislature. That matter was thrashed out at our last Conference, and we finally decided on the bicameral system. I do not know whether Mr. Iyengar would favour the same kind of unicameral government as would be favoured by Sir Akbar Hydari. Sir Akbar Hydari has given way to public opinion in British India in agreeing to a bicameral Legislature, and I think that everyone here would be very well advised to agree to that.

As regards the powers, it is very important to bear in mind what are going to be the functions of our Federal Government. These have been eloquently described by Sir Akbar Hydari. They are mainly the providing of funds for defence and for external affairs, the control of communications between the various States, and the protection of trade, both external trade and trade between the States. Now, these matters are far better entrusted to experienced statesmen who are sent to that Legislature by the legislatures or the governments of the different States. The directly elected representatives will be representatives of the people in the Lower Chamber, and the people are really far more interested in the legislation in the States; for there we will deal with those subjects in which the people are directly interested—namely, land revenue, law and order, and what are called the " nation-building " departments. The larger questions embracing the whole continent must be dealt with by the representatives of the various units federated, and for that reason we are very insistent that the two Houses should be at least equally represented.

I therefore suggest that the most suitable form of government is one to be modelled on the Australian precedent, with modifications; and these are the modifications that I suggest—that all Bills should be introduced in both Houses; and, athough Finance Bills can only be introduced in the Lower House, that the Upper House should have the power to amend them. Sir Tej Bahadur Sapru's proposal is that they should refer them back to the Lower House. In practice, there is very little difference, and I think that, if the Upper House is allowed to amend them, it will be simpler. Then the other modifications will be in reference to a possible deadlock. In the Australian Constitution, the Governor-General has the power to dissolve both Houses simultaneously. I suggest that it is necessary in our case to dissolve only the Lower House, for this reason, that in the Australian Constitution both Houses are directly elected.

As regards the Joint Session, I very strongly support the suggestion made by Mr. Zafrullah Khan, and very ably argued by him, that the decision should be made by a majority of two-thirds of the Members, if both Houses are equally represented, and of three-fifths if all the Members are in the Joint Session. I entirely agree with Lord Lothian about delays being necessary, and I think that the clause dealing with the deadlock should read very much as in the Australian Constitution, with those modifications, so that it would read approximately as follows:—

> "If the Lower House passes any proposed law and the Upper House rejects it, and if after an interval of three months the Lower House in the same session or the next session again passes the same law the Governor-General may dissolve the Lower House. If after such dissolution the Lower House again passes the proposed law, and the Upper House rejects it, the Governor-General may convene a joint sitting of the members of the Upper and the Lower House. The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed or amended by the Lower House, and if the proposed law is affirmed by the three-fifths majority of the total number of the Upper and Lower House, it shall be taken to have been passed by both Houses of Parliament and shall be presented to the Governor-General for the King's assent."

As regards the voting of Supply, I am in favour of clause (iv) (*b*) in your questionnaire; and I support Sir Akbar Hydari in this—that the function of voting Supply shall be shared by both Houses sitting in Joint Session.

If these proposals are adopted, Sir, then, and only then, I think both Houses will have equal powers. There are one or two other provisions which I think should be entered in the Act, which would help the smooth working of Finance Bills and improve the stability of finance:—

(1) The Executive alone should have the power to introduce Money Bills.

(2) That all Bills of expenditure should be introduced with a statement showing expenditure and proposed sources of revenue.

(3) That both expenditure and taxation, as budgeted in the previous year, shall stand unless amended by the Legislature.

That is all I have to say, Sir.

Dr. Ambedkar: Is it your view, Mr. Gavin Jones, that the Constitutions of South Africa and Australia have defined the relations between the two Houses in the manner in which they have have done because of the fact that they knew that they were drafting a Constitution for a federal form of government?

Mr. Gavin Jones: Yes, certainly.

Dr. Ambedkar: Then why is it that the Canadian Constitution did not lay down any rules regarding the relations of the two Houses?

Sir Muhammad Shafi: Because the general rule is that the relations shall be the same as those of the House of Lords and the House of Commons.

Dr. Ambedkar: But the House of Lords and the House of Commons make a unitary government, not a federal government. I said this has nothing to do with unitary or federal form of government; and, if you will permit me to proceed, I will say that the various Dominions made the relations of the two Chambers in their constitutions what they were as they found them existing between the House of Lords and the House of Commons at the time when they made their constitutions. They were not drafting them either for federal or for unitary. The Canadian Constitution said—

Chairman: You must give Mr. Gavin Jones a chance to speak, Dr. Ambedkar.

Mr. Gavin Jones: All that I would say is that the Australian Constitution is a federal constitution.

Dr. Ambedkar: Certainly.

Mr. Gavin Jones: I will also say that Australia is one of the most democratic countries in the world.

Dr. Ambedkar: I quite agree.

Mr. Gavin Jones: If they found it necessary to have all these safeguards, I think that it is very advisable that we should have them in India.

Dr. Ambedkar: That is another matter. The point is whether Australia made the provision it did in this connection because it wanted a federal constitution. I say that they simply took their relations as they found them in England at the time that they drafted their constitution.

Suspension of Gold Payments in the United Kingdom.

Sir Maneckjee Dadabhoy: I want, with Your Lordship's permission, to refer to the matter which was alluded to by Mahatma Gandhi before I arrived here this afternoon. I am sorry that I was not here and I ask for your forgiveness.

Chairman: You have that at once.

Sir Maneckjee Dadabhoy: I had an appointment, and I was unfortunately detained. From what I have heard of the remarks I cannot permit them to pass unnoticed. Having held the office of Governor of the Imperial Bank of India for the last ten years, since its inception, I cannot allow the remarks made by Mahatma Gandhi, to pass unnoticed. I therefore request Your Lordship's kind permission to say a few words.

I understand that the Mahatma has expressed his personal disapproval, and the disapproval of the Congress, at the action taken by the Government of India, over the head of the Indian Legis-

lature, in connection with the suspension of the Gold Standard, or the selling of gold in India. When I read the intimation of this matter in the London "Times" yesterday morning, I became exceedingly nervous over the situation, I having some intimate knowledge of the financial position in India and the present gold reserves of that country. I was so anxious that immediately we broke up yesterday afternoon I went to the House of Commons, and I also visited the House of Lords, where Your Lordship saw me last night. I was in the House of Lords until twelve o'clock at night to watch the events that were going on.

I must say definitely that the action adopted by Lord Willingdon and the Finance Member of India was the only action that could possibly have been taken in the interests of India. That step was essentially necessary. Not knowing the full circumstances of the history, or the circumstances under which the suspension of the Gold Standard was effected in this country, it was an obligatory duty on the part of the Viceroy and the Finance Member to have taken immediately similar action in that country. The interests of India in financial matters are intimately interwoven with those of Great Britain. Whatever happened in this country would most certainly affect the situation in India.

Moreover, what was the action taken by the Government of India, as far as I have been able to see from this morning's cables? I am happy to say that we have at this juncture a Finance Member in India of exceptional ability, who is in a position to grasp the situation so well. The statement which Sir George Schuster made in the Legislative Council was to the effect that, owing to the action taken in England, the Government of India had come to the conclusion that it was in the interests of India to suspend, by Ordinance, the operation of the Act which was passed in 1927. The Royal Commission on Indian Currency and Finance, of which I had the honour to be a member, recommended the introduction of a Gold Standard Bill; and in 1927 that Bill was passed. I may say that it was just two years after the Gold Standard was reintroduced into this country. The Gold Standard was, during the War, suspended in this country, as everybody is aware, and it was not until 1925 that it was reintroduced. The Hilton Young Commission came to the conclusion that, in India, in order to save and strengthen its financial situation, and to put it on a parity with other international countries, it would be the best step to take to put India upon the Gold Standard. In pursuance of that decision India was put on the Gold Standard. Personally I have been sharing the opinion with many financial experts, both in England and in India, that the Gold Standard has not worked satisfactorily in England on account of various cause. The result, which culminated in the passing of the Bill yesterday, I foresaw some six months ago. It was inevitable. Even some of the Members of both Houses had seen that it was inevitable; and it would be hardly fair to quarrel with the Government of India in the action which they have taken at present.

Dr. Ambedkar: Then why is it that the Canadian Constitution did not lay down any rules regarding the relations of the two Houses?

Sir Muhammad Shafi: Because the general rule is that the relations shall be the same as those of the House of Lords and the House of Commons.

Dr. Ambedkar: But the House of Lords and the House of Commons make a unitary government, not a federal government. I said this has nothing to do with unitary or federal form of government; and, if you will permit me to proceed, I will say that the various Dominions made the relations of the two Chambers in their constitutions what they were as they found them existing between the House of Lords and the House of Commons at the time when they made their constitutions. They were not drafting them either for federal or for unitary. The Canadian Constitution said—

Chairman: You must give Mr. Gavin Jones a chance to speak, Dr. Ambedkar.

Mr. Gavin Jones: All that I would say is that the Australian Constitution is a federal constitution.

Dr. Ambedkar: Certainly.

Mr. Gavin Jones: I will also say that Australia is one of the most democratic countries in the world.

Dr. Ambedkar: I quite agree.

Mr. Gavin Jones: If they found it necessary to have all these safeguards, I think that it is very advisable that we should have them in India.

Dr. Ambedkar: That is another matter. The point is whether Australia made the provision it did in this connection because it wanted a federal constitution. I say that they simply took their relations as they found them in England at the time that they drafted their constitution.

Suspension of Gold Payments in the United Kingdom.

Sir Maneckjee Dadabhoy: I want, with Your Lordship's permission, to refer to the matter which was alluded to by Mahatma Gandhi before I arrived here this afternoon. I am sorry that I was not here and I ask for your forgiveness.

Chairman: You have that at once.

Sir Maneckjee Dadabhoy: I had an appointment, and I was unfortunately detained. From what I have heard of the remarks I cannot permit them to pass unnoticed. Having held the office of Governor of the Imperial Bank of India for the last ten years, since its inception, I cannot allow the remarks made by Mahatma Gandhi, to pass unnoticed. I therefore request Your Lordship's kind permission to say a few words.

I understand that the Mahatma has expressed his personal disapproval, and the disapproval of the Congress, at the action taken by the Government of India, over the head of the Indian Legis-

lature, *in connection* with the *suspension* of the Gold Standard, or the selling of gold in India. When I read the intimation of this matter in the London "Times" yesterday morning, I became exceedingly nervous over the situation, I having some intimate knowledge of the financial position in India and the present gold reserves of that country. I was so anxious that immediately we broke up yesterday afternoon I went to the House of Commons, and I *also* visited *the House of Lords*, where *Your Lordship* saw me last night. I was in the House of Lords until twelve o'clock at night to watch the events that were going on.

I must say definitely that the action adopted by Lord Willingdon and the Finance Member of India was the only action that could possibly have been taken in the interests of India. That step was essentially necessary. Not knowing the full circumstances of the history, or the circumstances under which the suspension of the Gold Standard was effected in this country, it was an obligatory duty on the part of the Viceroy and the Finance Member to have *taken immediately similar action in that country. The interests* of India in financial matters are intimately interwoven with those of Great Britain. Whatever happened in this country would most certainly affect the situation in India.

Moreover, what was the action taken by the Government of India, as far as I have been able to see from this morning's cables? I am happy to say that we have at this juncture a Finance Member in India of exceptional ability, who is in a position to grasp the situation so well. The statement which Sir George Schuster made in the Legislative Council was to the effect that, owing to the action taken in England, the Government of India had come to the conclusion that it was in the interests of India to suspend, by *Ordinance*, the operation of the Act which was passed in 1927. The Royal Commission on Indian Currency and Finance, of which I had the honour to be a member, recommended the introduction of a Gold Standard Bill; and in 1927 that Bill was passed. I may say that it was just two years after the Gold Standard was reintroduced into this country. The Gold Standard was, during the War, suspended in this country, as everybody is aware, and it was not until 1925 that it was reintroduced. The Hilton Young Commission came to the conclusion that, in India, in order to save *and strengthen its financial situation, and to put it on a parity with* other international countries, it would be the best step to take to put India upon the Gold Standard. In pursuance of that decision India was put on the Gold Standard. Personally I have been sharing the opinion with many financial experts, both in England and in India, that the Gold Standard has not worked satisfactorily in England on account of various cause. The result, which culminated in the passing of the Bill yesterday, I foresaw some six months ago. It was inevitable. Even some of *the Members of both Houses had seen that it was inevitable; and* it would be hardly fair to quarrel with the Government of India in the action which they have taken at present.

Sir George Schuster made it absolutely and definitely clear that this was only a temporary measure. He also stated, as far as I am able to see from the report, that he was not in a position to lay before the Assembly the full circumstances of the case. I think that he acted with great caution and prudence in not doing so without fully realising the circumstances under which this action was taken. I have not the slightest doubt that Sir George Schuster, under the guidance of Lord Willingdon, will before long take the entire Assembly into his confidence, and will lay the full position before the Assembly.

This step, to my mind, was an inevitable one, considering our position and considering our gold reserves there. Although I am glad to say that our gold reserves in India are better to-day than they were last year, they are certainly not in a very favourable position. They are certainly far below what they were when the Royal Commission on Indian Currency and Finance recommended the introduction of the Gold Standard. I shall refer to this matter at considerable length when I come to discuss the question of financial Safeguards. At present I shall content myself with saying that, with great respect, I differ from my friend, Mahatma Gandhi; and, with all respect to him, I say that, in my opinion, he could not possibly find fault with the action taken by the Government of India at this juncture.

Head 3 (resumed).

Mr. Jayakar: Lord Chancellor, I do not wish to be long, because, after hearing the elaborate speeches of Sir Muhammad Shafi and Sir Tej Bahadur Sapru, there is very little indeed which I can usefully add to the discussion on this topic. I wish to confine myself to two small questions only: (1), as regards the necessity of having an Upper Chamber; and (2), as regards the necessity of having a two-thirds or three-fifths majority, or even an absolute majority, of the two Houses in passing Bills in a Joint Session. These are the two points on which I want to speak just for a few minutes.

As regards the necessity of an Upper House, I was somewhat surprised to hear the remarks of my friend, Mr. Rangaswami Iyengar, consequent as they were upon the remarks made by Mahatma Gandhi. This is eminently a case, Sir, where one can say that extremes have met—the extremes being the view taken by our esteemed friend, Sir Akbar Hydari, who also requires one Chamber, and the other view taken by the most extreme school of politics, if I may say so without offence, namely, that represented by my friend, Mr. Rangaswami Iyengar. Although they may appear to be alike, when you go deep down to the bottom you find that their views are absolutely apart. The reasons upon which Sir Akbar Hydari based his predilections for one Chamber were these. He says he wants one Chamber, and not two Chambers, because he wants a House as small as possible which will represent the Governments of the Provinces.

Sir Tej Bahadur Sapru: And the States?

Mr. Jayakar: Yes; I think I am quoting fairly the gist of his comments. He said the House he envisages is a small Upper House representing the Governments.

Sir Muhammad Shafi: Only one House?

Mr. Jayakar: One small House representing the Governments of the Provinces.

Sir Tej Bahadur Sapru: And the States?

Mr. Jayakar: Yes. And, as far as Mahatma Gandhi's view is concerned, on which Mr. Rangaswami Iyengar's remarks were based—I am again quoting, and I think I am right in this quotation —he said: "I have no fear of popular legislation. I am prepared to trust it. I do not think it will run away with the bit in its teeth. No control, therefore, of a popular House is necessary." These are the two grounds on which these two views, which would appear to have a seeming affinity, have been put before the Committee. If I may say so, both these views neglect an important principle which is consequent upon federation. Federation, if it is to be at all real, must secure two ends. It must give representation to the citizens of India in their individual capacity and also in their corporate capacity. I think that is an axiomatic truth when you come to look into the requirements of federation. Individual representation means what one may paraphrase as direct election.

Sir Tej Bahadur Sapru: Popular election.

Mr. Jayakar: Or popular election. Representation in their corporate capacity will be through the Councils of the Provinces or through the Indian States' Governments. Unless both these points are secured, the idea of federation will be incomplete. Now I want the Committee to consider this question: Is it possible to combine in one Legislature both these kinds of representation—popular representation, where every citizen of India would have a right to select his own representative for the Legislature; and the Governments of the Provinces and of the Indian States, selecting their own representatives as representatives of the Governments in their corporate capacity? It would be a very interesting political experiment, Sir, if a House could be devised where representatives selected on these two different principles could sit and deliberate. Speaking for myself, I should have no objection to a unicameral Legislature—if this almost impossible experiment could possibly be made—in which both these kinds of representatives could sit.

Coming to the second point, I entirely favour the view which Sir Sayed Sultan Ahmed maintained, and which was also put forward by Sir Tej Bahadur Sapru, that in a Joint Session a bare majority should be sufficient. My reasons for saying so are these. I yield to none, Sir, in my desire that the future constitution of India should be made as stable as possible. I have been a Member of the Central Legislature, and of a Provincial Legislature too, for a few years, and I appreciate quite well—as well as anybody else—

the desirability of having, in our future Legislature, elements of stability, or, to quote the expression used by Sir Muhammad Shafi, which will stabilise the future constitution of India. But I am also careful to see that they must not sterilize the constitution of India. I submit, Sir, for the consideration of my colleagues, that there are enough safeguards in a Dominion Constitution which will secure this element of stability; and, if we are convinced that these safeguards are sufficient for the purpose of ensuring stability, there is no necessity at all to require either the two-thirds or the three-fifths or even an absolute majority, to use a technical expression, meaning thereby the majority of the Members of both Houses put together. None of these things is necessary because enough stability will have been secured if we adopt a Dominion Constitution similar to one to which reference has been made more than once, namely, the Australian Constitution.

The reasons why I say so are these. The first safeguard which we secure is the establishment of the Upper House. That, I submit, Sir, If we come to have a bicameral Legislature, is enough safeguard to begin with. Then the next safeguard will be that whatever Bill passes both Houses will be presented, if we adopt a Dominion Constitution, to the Governor-General. Most of the Constitutions of the Dominions provide that, at that stage, when such a Bill emerging from the Joint Session is presented to the Governor-General for Royal Assent, the Governor-General has the right to do one of three things. He either (1) declares his Assent to the Royal Name's being affixed to it; or (2) he withholds such Assent; or (3) he reserves the Bill which has passed into law for the Royal Pleasure. That is another safeguard which we shall have to adopt if we make our constitution approximate to the constitutions of other Dominions. There is a further power which has been laid down quite clearly in the Canadian and Australian Constitutions: *viz.*, the Governor-General may return the Bill, which has emerged from the Joint Session, to the House which originally passed it, and may transmit for the consideration of that House any amendments which he desires to be adopted. This is a further safeguard. The fifth and last safeguard is that, emerging through all these processes, if the Bill goes further, it is then presented to the King in order that His Royal Assent may be given. I submit, Sir, that these five safeguards are quite sufficient for the purpose of ensuring stability.

Last year, Sir Tej Bahadur Sapru tentatively adumbrated his proposal of a two-thirds majority. I say it was only tentatively adumbrated; it was not adopted. Many people can vouch for my accuracy when I say that public opinion in British India did not receive that proposal with any favour, although that proposal, as then adumbrated, was only with reference to two main matters, namely, changes in the constitution and throwing out the Ministry. Even when the proposal was confined to these two exceptional cases, opinion in British India was not favourably disposed towards the adoption of a two-thirds majority. If we now lay down that every Bill, however unimportant, which does not secure the approval of

both Houses sitting separately must secure a two-thirds or a three-fifths majority in a Joint Session, I have no doubt that British Indian public opinion will not accept such a proposal.

I have another objection to this kind of majority and even to the absolute majority which some constitutions provide. Such majorities have this disadvantage, that they put a premium on absence from the sitting. Knowing, as I do, the working of the Legislature in India, I realise that it is necessary for us to provide some incentive in our constitution so that, in the first place, every Member will make up his mind about the merits of the measures coming before the Legislature; and, in the second place, every such Member will make a point of being present to record his view either for or against it. In view of the state to which public opinion has degenerated in British India, and in view of the lethargy which usually surrounds controversial questions in India, I think it is necessary to make our constitution so that two objects will be secured: (1) that public opinion will be quickened, and (2) that every Member of the Legislature will make it his duty to form his opinion and definitely to express it publicly, and not to sit on the fence. I think it necessary to provide for such a quickening to take place; and if you have a provision, whereby whether Members are present or not to express their views and give their votes for or against a measure makes no difference—which is what an absolute majority generally leads to—I think that, having regard to the peculiar necessities of India it would be a retrograde measure. I would therefore submit that a simple majority should suffice.

Coming to precedents, Sir, I find, speaking generally, that the later constitutions, the more modern ones, have accepted the principle of a bare majority in a Joint Session. The earlier constitutions had either an absolute majority or a two-thirds majority, but I think—and I am fairly accurate in saying so—that later constitutions, like that of South Africa in 1909, have deliberately departed from the principle of an absolute majority and have accepted a bare majority because they found, having regard to the conditions prevailing, that such a step was necessary. If that was so in other Dominions, it is all the more necessary in present-day India; and I submit, therefore, that for all these reasons it is not necessary to have a two-thirds or a three-fifths majority or even an absolute majority for the passing of a Bill in a Joint Session.

Mr. Sastri: I wish to say that, having heard all the speeches which have been made, I see no reason to change my view that a bicameral Legislature would, on the whole, be preferable to a unicameral Legislature. That is my first point. My second point concerns an observation which fell from His Highness The Maharaja of Bikaner. He seemed to make a condition that, in Federal India, there should be no such thing as "direct" taxation, I do not oppose that, but I am not prepared to say that I agree to it either. I have not given full thought to that question, and I think it is premature to expect us on this side to say at once that we accept that condition. It may be a sound proposition on the whole; but,

for the moment, I am not clear in my mind that it would be wi to adopt it. I therefore reserve my right to discuss it later.

H.H. The Maharaja of Bikaner: I did not ask for any conditio The question will be discussed when we take up Federal finance.

HEAD 1.

Strength and Composition of the Federal Legislature.

The following points for discussion in connection with this Head were drafted by the Chairman:—

(i) *What is to be the total strength of the Lower Chamber?*

(ii) *What is to be the total strength of the Upper Chamber?*

(iii) *On the assumption that all the Indian States accede to the Federation at the start, on what basis is the apportionment of the total number of seats between the States and British India to be made—*

(a) *in the Lower Chamber,*

(b) *in the Upper Chamber?*

(iv) *On the assumption that, at the outset, some States decline to enter the Federation—*

(a) *on what principles is the voting strength of the States in each Chamber to be determined from time to time, until such time as all the States become Units of the Federation?*

(b) *To what minimum extent must be adherence of Indian States be secured in order to justify the initiation of a Federal Constitution?*

(v) *What is to be the apportionment of the British Indian seats between the Provinces* inter se, *and on what principles is it to be based—*

(a) *in the Lower Chamber,*

(b) *in the Upper Chamber?*

H.H. The Maharaja of Bikaner: My Lord Chancellor, I trust that I shall first be permitted to express sincere gratitude, not only on behalf of myself, but, I am sure I can add, on behalf of the Indian States Delegation, and indeed of the States of India, to so many of our distinguished British Indian colleagues—several of whom I have the pleasure and privilege of hailing as my personal friends—for the ready willingness they have expressed to respect in every reasonable manner the sovereignty and Treaties of the States, and for the just recognition of the strength and validity of the claims and special position of the Indian States, as well as of our various difficulties. We are particularly indebted to Sir Tej

Bahadur Sapru, Sir Muhammad Shafi, Sardar Ujjal Singh, Sir Maneckjee Dadabhoy, Sir Sultan Ahmed, Mr. Gavin Jones, Mahatma Gandhi, Sir Provash Chunder Mitter, Diwan Bahadur Ramaswami Mudaliyar and Pandit Malavya. I have kept till the end, as deserving of special mention, the name of the talented and charming representative of the fair and better sex whom we are all so pleased to see amongst us, Mrs. Subbarayan. It is very gratifying that such support and sympathy should have been forthcoming at this meeting from such a representative body of British Indian leaders of different creeds and communities and political schools of thought. What they have stressed as regards the Indian States has made our task all the easier and rendered unnecessary certain observations which we would otherwise have had to make.

I should like, Sir, before proceeding to state the views of the Indian States Delegation generally on the various questions under Head 1, to ask for your indulgence and that of my colleagues, if I take a little time in making certain observations of importance to the States. I must apologise for taking up your time, but I hope and believe that our discussions on this and future occasions will be curtailed if the standpoint of the States is appreciated. It will also, I believe, help to shorten speeches on this side in the future. I seriously considered making such a statement earlier in our deliberations; but, apart from my reluctance to intrude unnecessarily, I had hoped that our close association of last time with our British Indian friends had rendered such a course unnecessary. With, however, some new colleagues—whom we are glad to see amongst us—it was perhaps inevitable that, in regard to some points, we should at some time or other have to traverse more or less over the same ground as we did last year. May I say straight away also that any reasonable and feasible suggestions coming from any responsible British Indian leaders will, of course, receive the fullest consideration of the States Delegation and of the Princes and States; but I would ask some of the speakers we have heard lately to bear in mind that, in view of certain vital considerations, it is not fair to place any one of us in the States Delegation in the unpleasant position of having to say "No" to certain proposals such as those that have been made to us. I need say no more in my own words. No less eminent a leader than Mahatma Gandhi has stated as his opinion that no one has the right to dictate to the States what they should do or what they should not do—a point which I emphasised before [illegible] States Delegation's view on the questions under [illegible] emphasise also by certain British Indian leaders [illegible] Mahatma Gandhi, there must in all matters between [illegible] and the States be a spirit of reasonable give-and-take [illegible] to quote once more from the Mahatma's words [illegible] able to come to any definite scheme of [illegible] we shall ultimately quarrel and break up [illegible] operation of the States must be whole-[illegible] secured by their willing consent and not by [illegible]

My Lord Chancellor, I cannot help thinking that some of the proposals and statements and demands would not have been put forward had there not been a certain lack of knowledge as regards the conditions, sovereign status, Treaties, and rights of States, their relations with the Crown and their internal affairs. I take the liberty of stating that the ideas of some of our colleagues would undergo a considerable change if they came into closer touch with us and were able to acquaint themselves with facts at first hand by visits to our States. And I take this opportunity of cordially extending an invitation to such gentlemen to visit Bikaner as the guests of my State and of myself, and to travel over its length and breadth, preferably on our ships of the desert, the camel. I make bold to predict that, by such visits, their eyes would be opened, and that they would then correctly realise that the relations happily existing between the Rulers and the ruled—the vast majority of the Princes and their governments on the one hand and the subjects of the States on the other—are totally different from what may be their present conception, or as some papers and persons have tried to paint them. May I say also that it was particularly gratifying to us to hear from the lips of Mahatma Gandhi that he knows and feels that the Princes have the interests of their subjects zealously at heart.

In the words of some of those gentlemen who have attempted to prescribe to the States in regard to various matters, it was, I think, admitted that logic and politics do not always go together. Idealistic principles are not always reconcilable with what is attainable. Certain things are obviously not within the range of practical politics, nor in accordance with the sovereignty of the States and the conditions prevailing therein. And it is impossible for the States in all things to accept a uniform practice and procedure with British India, whether in the field of Federation or in other directions—if for no other reasons, at least on the grounds of the diversified conditions amongst the States *inter se*. If impossible conditions are proposed, it is obviously out of the question for the States or the Princes to accept them; and I venture to add that, not only the vast majority of the States, but also the vast majority of the population and subjects of the entire Indian India, will share the same view. Even if we would, we could not possibly accept any impracticable propositions which would not be accepted by the States, and their Rulers and governments, as a body. It therefore follows that the decision in certain matters—and I emphasise the words "certain matters"—must, in the very nature of things, be left primarily, and essentially, and solely, to the individual government of the State concerned, or for the States to settle amongst themselves.

My own personal views in regard to matters such as those of sending representatives from the Bikaner State to the Federal Legislature have already been made clear; and, in view of the conditions happily prevailing in my State, I and my government are in no way opposed to our Legislative Assembly having in some

way or other a voice in the selection of our representatives. I welcome that. His Highness of Bhopal has similarly made the point clear. For the rest, and in the natural solution of such problems, time, evolution and the conditions prevailing, and above all public opinion in our States, will be important factors.

Reference has been made to the German and other federal constitutions of States or Dominions, which will not be of much avail to us here. The States do not keep before them the old German or any other constitution. They have, as has been made clear repeatedly from the beginning of our present deliberations and in the past, kept before them the position of the States, which is without its parallel in history. Need it once again be emphasised that we have to evolve a special Federation to meet our unique conditions? In Germany, I believe it is beyond dispute that all the federating German States were sovereign all along. This is not so in regard to India, where the States are already sovereign and autonomous and British India and its Provinces are at present not sovereign. It is upon the sovereignty of the States and their right to exist, as one of the two great entities in India, that the States make their firm stand.

My Lord Chancellor, before we came here last year, it was at one time suggested that the Princes and States should come under the head of the most important of the "minorities" throughout the length and breadth of India. It is, however, on much stronger grounds and claims, and on irrefutable and undisputed constitutional and historic facts, that the States base their claims. They stand on their sovereign status and powers, and on their Treaty and other rights, as already stated. In these circumstances, as has been admitted by some of the critics of the scheme as evolved by us, no other federal constitution can form any precedent or analogy. We have in the past tried to meet British India as far as possible. indeed, some amongst us think that we went too far. We have met you as far as is practicable and safe for the States. We shall continue to do so in every reasonable manner possible. But pray remember that all of us, at the best of times, are of a conservative frame of mind, and that there is already a certain amount of alarm and suspicion which we have to overcome in our States, and that there is a limit beyond which it will be impossible for the States and the Princes to go.

It hardly needs repetition that the States cannot, therefore, be coerced or driven into federation. The Treaties of the States are with the Crown, and they can enter into a federation only through another Treaty with the Crown, on receiving adequate and effective guarantees from the Crown ensuring to the States their existence as one of the two great entities of India, and ensuring the continuance of their sovereignty and their Treaty and other rights except in so far as these may mutually and voluntarily, by agreement between us here, have been delegated to the Crown for the specific purposes of federation, and on the specific understanding that such delegated sovereignty will be shared by the States with British

India equally in the Federation, including—I do not emphasise the word "equally" here—including the Legislature and the Executive. ...

I have repeatedly been asked whether the States will come into the Federation. My faith in federation remains unaltered; and I consider that federation is the only alternative which will help India at this present juncture. But if I am asked at the present moment to say whether the States will come in, I can only say that I very much hope that that will be so, and that we are going to do our best to secure that very desirable end. So far as the States are concerned, the position can be summed up, as I have repeatedly said in the past, in these terms. The crux of the question to my mind is that, when the Princes and States last year were invited to join a federation, they generally and gladly expressed their willingness to consider the question on terms of equality with British India, and even to make some sacrifices on the conditions mentioned. Provided, therefore, that the remaining principles and details are dealt with as satisfactorily as have the various questions discussed so far—taking on the whole, both the last Session and the present Session—and provided that the Princes, through essential provisions, feel that their future existence, and the sovereignty of their States, big and small, are not threatened, I am as sure to-day, as I was when we met the last time, that the great majority of the States will join the Federation. Otherwise, of course, no Ruler who stands as a trustee of his State and subjects, and the custodian of their rights, will be a free agent to enter the Federation. If we are asked, however, to agree to any proposition which is tantamount to the disruption of the States, big and small, either now or in the future, we can best reply in the words of Sir Austen Chamberlain. I would beg our friends who have criticised the past scheme to bear in mind the words Sir Austen Chamberlain addressed to the League of Nations not so very long ago when faced with proposals detrimental to the solidarity and well-being of the British Empire. He said:—

> "You do not know what you ask us. You are asking nothing less than the disruption of the British Empire. I yield to no one in my devotion to this great League of Nations; but not even for this League of Nations will I destroy that smaller but older League of which my own country was the birth-place and of which it remains the centre."

Great and sincere as is the devotion of the Princes to their Motherland, and ardently as they desire to co-operate with British India in assisting in India's progress towards Dominion Status as an independent, honoured, and equal Member of the British Commonwealth of Nations, and willing as they are even to make reasonable sacrifices in this direction, it will, I am sure, be realised by many of our friends on the other side that it would be both unreasonable and impossible to expect the States to agree to any proposals which would in effect lead to their disappearance and the

loss of their important sovereign rights or the individual entity of their people. Such would be a betrayal of the trust that they have inherited and of the mandate that they have from their brother Princes.

One of the speakers spoke of the States coming in for selfish reasons, whilst it was also stated that the real gain to the Princes from federation was entry into the Federal Executive Government. Ideas differ. Rather it is considered a sacrifice on the part of the States. The two essential conditions precedent to entering the Federation are, as already stated, the safety and integrity of the States, and adequate safeguards or guarantees. But what of the gain to British India in unity, stability, experience, and especially in defence from the martial traditions and the fighting races of which the States can legitimately boast? We were told that certain matters are not for the States to decide but for the Federal Structure Committee. We have been incorrectly told that the Princes have agreed to join the Federation, and that they have agreed to accept interference by British India in certain domestic affairs, if I understood it rightly. To the second point our answer must definitely and inevitably be "No." To the first, it has been abundantly clear that, whilst the Princes and States have expressed their willingness to consider entering the Federation, this is not without qualification, but is based on certain essential conditions. Similarly we have made it clear in the past that the States are not agreeable to accepting common criminal or other laws and legislation.

So far as the representation of the States in the Federal Legislature is concerned, and subject to what I have since stated, may I be permitted to quote the legal language used by Your Lordship last year, namely, that the States' duty will be to deliver their representatives in good order and condition? There has been a talk of divided mandates between the representatives of the States and of British India. There is no question whatsoever of States forming a solid bloc to oppose British India. Most of us on this side have not the slightest doubt that, for the most part, the representatives of the States and British India will vote almost entirely on regional lines. And may I also state that the Upper House need not necessarily be a conservative body as in the India of to-day? It would represent the views of the various governments. The only points of conflict that I can conceive between British India and the Indian States are these:—(1) if there is a proposal to break away from the Empire, which the scheme under consideration for India's being placed on a footing of equality and partnership with other parts of the Commonwealth happily renders it unnecessary to touch on; (2) if the very existence of the States were threatened, or there were any danger to the existence of the States or any desire to encroach upon the Treaty and other sovereign rights of the States, except in so far as may be willingly and mutually agreed upon—on which point too I decline to believe that any serious proposition of that kind can be put forward on the part of the majority of our British Indian friends; (3) there are fiscal and financial matters

regarding which we hope that, by previous fiscal enquiry as well as the discussions which will take place here, all such matters will have been satisfactorily settled before the States enter into the Federation, and on which matters we demand, in fairness to the States, mutual satisfaction on all such points.

May I, in the interests of India, and of the federal scheme which I have so much at heart, express the earnest hope that we shall not hear any more, from any gentleman, of the States being permitted to exist *only* under certain conditions. I do not think I need say more on that point except that this would involve a violation of the sovereignty of the States by force, and that their Treaties should be torn up, involving also a breach of faith on the part of Great Britain. I decline to believe that the doctrine of Treaties being regarded as "scraps of papers" could ever be accepted by the great majority of the British Indian leaders. I need only say that any such remarks are apt to lead to the forfeiting of the general sympathy of the States and Princes as a body in all matters in which we are desirous that we should work in close harmony and co-operation with our British Indian brethren.

Sir Maneckjee Dadabhoy: Maharaja, as far as I am aware, nobody on this side or in the Committee has alluded to that matter at all.

H.H. The Maharaja of Bikaner: I heard a gentleman say that, if the States wish to exist, they can only do so if they federate—or some words to that effect; but we will pass over that matter.

It will be recalled that when, at the first Plenary Session of the Round Table Conference on the 17th November, 1930, the Princes and States were invited by British India to join a Federation and to visualise an India which will be *one* single whole—each part of which may be autonomous and may enjoy absolute independence within its borders, regulated by proper relations with the rest—our response was as sincere as it was spontaneous. It was my privilege on that occasion, at the request and on behalf of my brother Princes, to state that, whilst the final answer must obviously depend on the structure of the Government indicated and on other points involved (such, for instance, as certain necessary Safeguards—constitutional and fiscal—which we regard as of vital importance to the protection of the rights and interests of our States and of our people), the Princes would only come into the Federation of their own free-will and on terms which would secure the just rights of their States and subjects. I mentioned two essential and broad conditions upon which the States were ready to consider entering the Federation:—(1) that India retains the British connection as an equal partner in the British Commonwealth of Nations; and (2) that an equitable agreement is reached between all the parties concerned to govern the relations of the two Indias, ensuring for the States their due position in the future constitution as co-equal partners with British India, guaranteeing their Treaties and internal sovereignty, and safeguarding their interests, including those of their subjects, on

terms just and honourable alike to the States and British India. Amongst other important details in this connection I need only invite attention to what I said on that occasion about "Paramountcy," and I will deal later similarly with the important question of the Federal Court. It has thus been made abundantly clear on many occasions that, as the States demand freedom from interference in their own internal affairs, equally do they desire to refrain from interference in the purely domestic affairs of British India, and that the States can only come in on terms of absolute equality with British India—not in a position of subordination or inferiority, but as equal partners in the Federation. I equally clearly stated that any idea of the States desiring to dominate over British India was totally foreign to our thoughts and our plans. On the other hand, it will be generally agreed that we are equally entitled to ask that the States should not be dominated by British India or anyone else, which would be totally opposed to the basic idea of any true federation. At the same time, the States must take care to safeguard that the Federal Executive does not encroach upon the sovereignty and Treaty rights of the States, or interfere in matters, or have a voice in questions, other than those which may specifically and voluntarily and mutually be agreed upon and accepted by the States.

As regards the vote of censure, I made it clear, Sir, last year on behalf of His Highness of Bhopal and myself keeping in view the list of Federal subjects as drawn up at present and subject to a fair and just and equitable settlement of the question of the number of State representative in the two Federal Houses—that the Indian States would, we thought, be perfectly content, as regards the percentage of the majority in throwing out the Federal Government, to leave this point to be settled by British India with the Crown. But, in regard to the Executive, any votes of non-confidence, likely to result in the overthrow of the Federal Government would obviously be a matter of great importance to the States; and if the States are invited to join the Federation it would be out of the question for them to sit still and to have no voice at all in the overthrow of the Executive and in Governments changing hands repeatedly, as they do in some of the Continental constitutional countries, since they are directly concerned with a sound and stable Government, and with continuity of policy as far as possible in regard to matters of common concern to British India and the States.

At the same time, whilst therefore it is essential that the subjects, or representatives of the States must also in no way be debarred from being members of the Federal Executive Cabinet, I submit that the right standpoint is for such members, while they are Cabinet Ministers, to forget that they represent British India or the States, and not to attempt to look at any question coming before the Federal Government from the purely British Indian or the Indian States' standpoint, but to view all matters coming within their purview from the standpoint of all-India, its

honour and its welfare, and with due regard to the legitimate rights and interests and claims of the two entities.

I would now invite the attention of my colleagues to the mandate which we on this side have received from the Chamber of Princes and the Rulers of the Indian States when the provisional decisions taken at the first Session of this Conference were subjected to a close and prolonged examination by the body which speaks, so far as any corporate body can, for the Princes and States as a whole, namely, the Chamber of Princes. The first resolution passed by the Chamber in March last was as follows:—

> "This Chamber places on record its high appreciation of the single-minded devotion and statesmanlike ability with which the representatives of the States, both Rulers and Ministers, represented the States at the Conference, and supports in principle the scheme outlined at the Round Table Conference, which, while laying the foundations of a greater India, aims at securing to all parties in the country their legitimate cherished rights beyond risk of future encroachment."

The following is the second resolution adopted by the Chamber of Princes, on the motion of His Highness of Dholpur:—

> "This Chamber authorises its representatives further to carry on discussions and negotiations with due regard to the interests of the States and subject to the final confirmation and ratification by the Chamber and each individual State."

I will not touch at length upon certain resolutions passed by the Princes at a meeting of our own which precedes the formal session of the Chamber of Princes, where we design to obviate and aim at obviating as far as possible ventilating in public any differences of opinion amongst ourselves. Even the resolutions passed in the Chamber of Princes are subjected to a thorough scrutiny, though of course all the Princes individually cannot be bound beforehand as to their views on such resolutions. Amongst the resolutions passed by the Princes at their own meeting, a day or so before the Chamber of Princes met and passed the two resolutions I have just quoted, were resolutions which attached importance, naturally, to the sovereignty, internal autonomy and independence of the States being safeguarded, and to an equitable adjustment of fiscal matters. The Princes were asked by the resolution to agree that the representatives of the Chamber of Princes at the Round Table Conference should negotiate, with a view to securing individual representation in both the Federal Chambers for the States enjoying full or practically full powers.

Now, Sir, before coming to the question of qualifications, I should like to say one word about another matter. A reference has been made to there being something like 570, or some other number of States: and I think it has been said that some States, with a revenue of Rs. 20, would also ask for individual representation in the future Federation. I can only say that this again represents

a sad confusion of thought with regard to the position of the States possessing sovereign powers and that of the minor or lesser States, talukdaris, jagirs, etc., in our Indian States territory. As was made clear in my speech *in this Committee on December 5th last*, on behalf of our Delegation, "the component elements of the Federation would be (1) on the one side, the States, through their representatives, chosen by the governments of their States; and *(2) on the other side, British India*" *One of the important details* which no doubt will come up for discussion between the States, under the presidency of the Viceroy—whose friendly offices we feel we can always rely upon—will be to prescribe some test for the claims of States for individual entry into the Federation, and this leads me to deal with the question put to us.

Let me point out to you, Sir, that this is no new question. As anyone acquainted with the history of the States and the institution of the *Chamber of Princes* will know, this is a case of history repeating itself. Alarms and jealousies were very naturally created some ten or twelve years ago, when we were dealing with the constitution and membership of the Chamber of Princes. Similar alarms have been raised to-day, though from different causes and for different reasons, in regard to the individual entry of the States into the Federal Legislature. In regard to the membership of the Chamber of Princes, the essential qualifying tests prescribed, with the consent of the States and after mature consideration and approval by His Majesty's Government and the Viceroy, are.—(1) Rulers of States who enjoy permanent dynastic salutes of eleven guns or over; and (2) Rulers of States who exercise full, or practically full, internal powers such as, in the opinion of the Viceroy, qualify them for admission to the Chamber of Princes. This, I think, answers the queries put to us; and I would only add that no man in his senses has proposed, or could propose, that small units of Indian States territory, with revenues of Rs. 20, should enter the Federal Constitution individually as sovereign States.

Sir, I am afraid it is a little late; but, if I am not out of order, before concluding my general remarks, I should like to say that I did not deal with the question in the beginning, because I wanted to hear the views of our British Indian friends. But should any special seats be reserved for any important special interests in the constitution, it is my duty to urge the claims of the important *Indian mercantile community, known popularly in India as the* Marwari community, large numbers of whom come especially from Bikaner and from our next door friendly neighbour, the Jaipur State.

Now, Sir, *before giving you the views of the Indian States* Delegation on Head 1, I should like to appeal strongly for greater trust and confidence in the States. Trust, as we know, begets trust, and it is only by having confidence in one another that we can make real progress. I think we can fairly claim that the very fact that the Princes agreed to consider British India's invitation to

enter into Federation, and that they are still proceeding with the matter, is a practical proof of their having confidence in all men of reason amongst our British Indian brethren.

Before the last Conference assembled, and long before that, it was freely alleged in certain quarters that the Princes were entering into an unholy conspiracy with the British and Indian Governments in order to hinder the advance of British India towards her legitimate goal. When that libel was, happily, finally disposed last year at this Round Table Conference, other motives were assigned to the willingness of the States to enter into the Federation. I appeal no less for acceptance of the idea that, if the constitution is satisfactorily evolved, and if the States feel safe and confident of their security, in entering the Federation, we shall, in the words of Pandit Madan Mohan Malaviya, have an India united even though divided in certain aspects; and the association of British India and the States leading to as great and abiding and mutually beneficial a co-partnership as was so eloquently pictured by Mahatma Gandhi when visualising a similar partnership between Great Britain and India. This idea I have for years thought of and worked for, and still confidently hope for.

The States Delegation's view in regard to the questions under Head 1 can be very briefly dealt with. I shall not attempt at this stage to make any remarks, though I shall be glad to explain at a later stage, if desired, the reasons for these views.

In the view of the States Delegation, the total strength of the Lower Chamber should be 350 and that of the Upper Chamber 250.

Chairman: Would it be possible for Your Highness to deal with the next question on the assumption that all the Indian States accede to the Federation at the start—on what basis is the apportionment of seats to be made?

H.H. The Maharaja of Bikaner: Yes, I come to that. We, after taking everything into consideration, were originally inclined in India to ask for a little higher number in the Lower House; but, as we are not here to try and secure bargaining points, and so on, we thought we should try and put down what we think is likely to command general acceptance by the States, and in the Lower House we want a representation of $33\frac{1}{3}$ per cent. and British India $66\frac{2}{3}$: and in the Upper House 50/50.

Chairman: Now come to the next question—

> "On the assumption that, at the outset, some States decline to enter the Federation—(*a*) on what principles is the voting strength of the States in each Chamber to be determined from time to time, until such time as all the States become Units of the Federation?"

H.H. The Maharaja of Bikaner: Our idea is that other States entering the Federation—and, of course, there is nothing to debar any State individually entering the Federation (for instance, if I want to enter the Federation, even if other States do not, I can

do so)—that other States entering the Federation should have extra seats, and that it should be clearly laid down that they will make room for the other States that later join the Federation.

Sir Maneckjee Dadabhoy: Some of us did not follow that.

H.H. The Maharaja of Bikaner: That States entering the Federation for the time being have the extra seats, and they will automatically, *by provision and rules, make room for other States as* they federate.

Sir Maneckjee Dadabhoy Is that in addition to the $33\frac{1}{3}$ per cent.?

H.H. The Maharaja of Bikaner No; according to the other proportion we agree upon

Sir Samuel Hoare May I get that quite clearly in my head?

H.H. The Maharaja of Bikaner We are asking for 125 seats. Supposing only 75 per cent. of the States enter, then those 75 per cent. should have the proportion of the States' seats allocated in excess of what may be settled for each State individually; and they will reduce their seats as other States come in. The States should have their full proportion in the House.

Sir Samuel Hoare: You mean, then, Your Highness, to put it into a concrete sentence, that in the Upper House, assuming you have your 50 per cent. of the representation, whatever the number of the Princes who have entered, your voting power should be half the voting power of the Assembly?

H.H. The Maharaja of Bikaner: Yes Of course, that is based on the assumption that, as we hope, a large majority of States will come in.

Sir Samuel Hoare: I also would accept the assumption: but I just wanted to be quite clear what your proposition was.

H.H. The Maharaja of Bikaner: Yes.

Chairman: But supposing, merely for the sake of argument, that you were to have a 100 seats, and they were to have a 100 seats, and that at the beginning you had only 70 coming in, the 70 would have the 100 votes?

H.H. The Maharaja of Bikaner: That was the *idea*, yes.

Chairman: Now, the next question is this:—

> "To what minimum extent must the adherence of Indian States be *secured* in order to justify the initiation of a Federal Constitution?"

H.H. The Maharaja of Bikaner: Well, Sir, we discussed this *question once, and in consultation with His Highness the Chancellor* since then we have come to the conclusion that we would rather deal with this matter at a later stage, if that is possible, because some of us have doubts; but may I first ask a question of you, Sir, to put it the other way round?

Chairman: Certainly.

H.H. The Maharaja of Bikaner: What is meant by that—numbers or population? What is meant exactly by this question? What is the test you are thinking of?

Chairman: May I just tell you. I am, as it were, thinking aloud now, and I am not expressing any view or any decision or anything like that. But, for example—merely for the sake of argument—if only one State, with two square miles and three people and four rupees of revenue came in, obviously that would not do. On the other hand it may be—I am not making any decision—that, in answering that rather difficult question, you might have a number of questions to consider. You might say, " What is the total population of the States? What proportion of that population is coming in? " Then you might say, " What is the total area of the States, and what proportion of that area is coming in? " Then you might say, " What is the revenue of the State? What proportion of that revenue is coming in? " And now I am going to tread upon very delicate ground—that is to say, there may be some States which, although perhaps they have not the same revenue as other States, or the same area, or the same population, have considerable prestige.

H.H. The Maharaja of Bikaner: All that is very important.

Chairman: For example, I have a list of the States which I have been working at last night and this morning, which I will show you later on. I have come to the conclusion, in the table I have got, that of salute States there are 120. Some of those have 21 guns, some 19, and so on; and, with regard to non-salute States, there are 458. Therefore, putting together those four things—I am not saying they are the right things to put together—(1) population, (2) area, (3) revenue, (4) prestige, I am only just thinking how far those would bear upon the consideration of the question. But, by all means, Your Highness, do not answer that question now. It is one that wants consideration.

H.H. The Maharaja of Bikaner: I should like to deal with that: and, if I may, I should like later on, at any time you call upon me, to put forward certain points which have a very direct bearing on the representation of the States. For instance, there is a problem amongst us, not only of the bigger States, but important States in many ways, possessing sovereign rights, which are known, comparatively speaking, as the smaller States—and this is certainly a point of very great importance to the whole Order of Princes and the entire body of States—particularly, of course, to this category of States—which I have to bring forward. And similarly with it are inter-linked the questions of the salutes and the Treaties and all those points. Perhaps, if we may, you would allow us to have a little further discussion amongst ourselves on these points before I answer question (iv).

Mr. Joshi: Just for elucidation; His Highness proposed $33\frac{1}{3}$ per cent. and 50 per cent. as the proportions of seats for the States. Does he include the States and the Jagirdaris?

H.H. The Maharaja of Bikaner: It includes the entire territory which is known as Indian States territory, or the other entity in India known as Indian India.

(The Committee adjourned at 4-25 p.m.)

PROCEEDINGS OF THE TWENTY-EIGHTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON THE 23RD SEPTEMBER, 1931, AT 11-0 A.M.

HEAD 1

Strength and Composition of the Federal Legislature—(continued).

Sir Maneckjee Dadabhoy My Lord, We all heard, with considerable interest. the speech of His Highness the Maharaja of Bikaner yesterday. *I may at once say that we are always prepared* to consider his utterances with the reverence which they generally deserve. His Highness is one of the most foremost Princes in India, and an enlightened Ruler who has taken considerable interest in the progress of his own State. He has joined on many occasions in showing his active sympathy and extending his support to the legitimate grievances of Indians. My Lord, I am not a bit surprised at the sentiments to which he gave expression yesterday. The other day, when I was speaking on one of the Heads, I myself warned this Conference that it would be futile for us to ask to interfere with the internal economy or with the internal administration of the Indian States; we should give them an extensive discretion in the matters affecting their own personal interest, and we should allow them to urge as many safeguards as they think proper and necessary for their self-protection before they agree to come into the Federation of India. My Lord, His Highness stated *yesterday that the Princes would not agree to any dictation or* coercion from the members of the Round Table Conference. I entirely agree with him. If there have been any expressions of dissent here on this side with reference to the powers and the privileges of the Indian States, I assure His Highness that they were made in no carping spirit, in no spirit of antagonism to the Indian States, in no spirit of opposition to Indian Princes, in no spirit of reflection or criticism, or to prevent them coming into the Federation with full liberty and with full consideration of their policy, their measures and their status.

But, my Lord, at the same time, His Highness The Maharaja of Bikaner, with his usual natural shrewdness, will be able to discern that there should be a certain amount of criticism, however unpleasant and unpalatable it may be to the Princes. We have assembled here honestly to represent our views and to put the position of British India before this Conference. There may be occasions when we *differ from the Princes in regard to certain matters;*

but I trust the Princes will receive our criticism in the friendly spirit in which they are made.

His Highness of Bikaner stated yesterday that all the vital and important question will have to be considered very carefully, and that such matters as finance, numerical strength and representation and so on will require most careful consideration. Their Highnesses have imposed certain conditions which must be accepted before they will consider the question of coming into the Federation of India. If I have rightly understood His Highness The Maharaja of Bikaner, he has insisted on the proposition that only on terms of equality, not only with the British Government, but with British India, will the Princes come into the Federation. So far as equality is concerned—equality in the matter of dignity, equality in the matter of prestige, equality in the matter of the assertion of their rights and privileges and in regard to the part to be played by them in the Federal Legislature—I say there can be no dissent. But, if that equality is to go to the extent of demanding equal representation in the Upper Chamber of the Federal Legislature, I am afraid there will be some opposition, and I am afraid that we on this side may not be prepared to agree to that condition of equality.

His Highness The Maharaja of Bikaner has made it perfectly clear that, in the Upper House, he thinks there should be equality of representation. I heard him say—and he insists—that the strength of representation should be 50/50. Now, so far as the numerical strength of the Upper House is concerned, that is a very difficult matter to discuss and to decide at this stage, particularly as we have not yet settled the communal question and the numerical representation of the Muhammadans in the Upper House—and the number of seats which should be allotted to the Muslims has a direct bearing on the total numerical strength of the House. I may be permitted to say, however, that the claim put forward by the Princes for 50 per cent. representation in the Upper House is not justified either by the area which the Indian States comprise or by the population of those States or by any other consideration. I do not desire to be misunderstood in any way. I have the highest respect for the position and the status of the Princes. I have the highest respect for their methods of administration. But I think they will agree, on further careful consideration of this matter, that it would not be quite reasonable to expect a 50 per cent. representation in the Upper House.

My Lord, what would be the effect of such a scheme? If 50 per cent. representation is given to the Princes, I am afraid it will become a somewhat difficult problem in the matter of adjudication, for the simple reason that, if a 50 per cent. representation is given to the Princes, it means an absolute, untrammelled division of opinion and control in the deliberations of the Upper Chamber. What would be the most important and foremost effect of such a representation? I fear that the Indian States will be in a very large measure controlling the policy of the Upper Chamber. My

Lord, I personally think, though I have the greatest respect for the manner in which the Indian States have carried on in the past and are now carrying on their administrations, I would prefer—and this is my personal opinion—to remain under the benevolent but despotic influence of British bureaucracy to coming under the influence of the untrammelled autocracy of the Princes.

I should not be understood to mean a single word of disparagement to the great Indian States in any way. What I wish to point out is that such a proposal may well be considered somewhat unfair; and, in my opinion, a 40 or 42 per cent. representation of the Princes—I am speaking at present only of the Upper Chamber—would be quite an adequate representation, considering the areas over which they rule, considering the total population which they possess, and considering all other circumstances to which I have given my most careful thought.

Chairman: Have you given your careful consideration to this, Sir Maneckjee? We just want to work this out a little. What did you envisage as the number of the Upper Chamber? What do you envisage as the number?

Sir Maneckjee Dadabhoy: I am in agreement, more or less, with His Highness.

Chairman: What number do you think would be a proper number?

Sir Maneckjee Dadabhoy: 100 to 125.

Chairman: Now, let us take it at 100. Supposing you say 100 in the Upper Chamber, 40 per cent., I take it, would mean 40. Supposing that there are 100 in the Upper Chamber, and the *Princes are to have only 40, they may be in a difficulty. I am not* arguing their case; I am only making the suggestion that that is not enough to go round in this sort of way. They will say—"We want to attract as many people as we can into this Federation, and, if we have only 40 seats to go round, we may not be able to attract as many as we would like. We want many more than that." That might be worked in this way (I do not say that it is the right thing to do)—let us assume that your proportion of 40 per cent. is right, then, if the Princes wanted to have rather more than 40, have you any objection to increasing the number of the Upper House?

Sir Maneckjee Dadabhoy: None whatever.

Chairman: You have no objection to increasing the number of the Upper House to what?

Sir Maneckjee Dadabhoy: So far as I am able to *see from the* recommendation of the Simon Commission, the recommendation of the Government of India, and the recommendation of other bodies, there is a general desire that the number should be anything *between 100 and 150. If you take up to half the numerical* strength of the Lower House, I think that the Princes would have no legitimate ground of complaint.

Chairman: How many do you propose to give them on your most generous estimate? I do not want a percentage; but how many in actual Members do you propose to give them? Are you prepared to say that you will not go beyond 60 Princes in the Upper Chamber?

Sir Maneckjee Dadabhoy: I am at present inclined to take the view, as regards the Upper Chamber, that it ought not to exceed that number. There are arguments which you say are very cogent, but they apply equally in the case of British India. What Your Lordship has said applies equally to British India. In the case of British India, the Upper Chamber is not only to consist of elected Members but some sort of nomination will also have to be provided for as regards the Upper Chamber. I have laid my views before you, and that is what I have said.

Chairman: Might I ask you this. Assume, for the sake of argument, that the number is 150 (I do not say that it is right), and assume that you are going to have nominated members (I am not expressing an opinion upon that)—are your nominated members to be in addition to the 150?

Sir Maneckjee Dadabhoy: No.

Chairman: At whose expense are the nominated members to be put there? Are they to be put there at the expense of British India, or at the expense of the Princes?

Sir Maneckjee Dadabhoy: Certainly at the expense of British India.

I feel certain that the Princes themselves, on a fair consideration of this matter, and after a discussion among themselves, will think that after all British India does not propose to treat them badly. I have great confidence in the wisdom of our Princes. I have great confidence in their good sense and judgment; and after the sympathy and patriotism that they have shown us in the past, and from what I have learned from their speeches at the last Session, I feel certain that Their Highnesses will treat us with generosity and also with consideration.

H.H. The Maharaja of Bikaner: You do not want generosity at our expense, I am sure.

Sir Maneckjee Dadabhoy: No. The proposal which I have made, as I have pointed out, is most reasonable and fair, considering the position of the Indian Princes, considering their population, considering the extent of their area, and considering the other vital interests over which they rule.

As regards the Lower Chamber, whatever may be the numerical strength fixed, I am prepared to concede to the Princes $33\frac{1}{3}$ per cent.

His Highness The Maharaja of Bikaner also stated yesterday that there should be a full settlement of fiscal matters before the States entered Federation. I presume that he only referred to

fiscal matters relative to Federal finance, which we are discussing to-morrow.

H.H. The Maharaja of Bikaner: We were talking generally of matters in which the States will be concerned or affected on the question of federation. We will be discussing those views when that subject comes up.

Sir Maneckjee Dadabhoy: If the question refers only to the position of the Princes in regard to Federal finance, it is a different matter; but if there are other matters unconnected with Federal finance in which the Princes think themselves interested, and they want any special privileges, I am not aware that His Highness has made clear to us what they are, and I will, therefore, not say anything upon the matter.

There is one other matter to which I would like to refer. His Highness yesterday stated also that the States are not going to come into the Federation out of selfish motives. Nobody, so far as I remember, has alluded to any such sinister motives under which the States would propose to come in; but, at the same time, if you will permit me to say so, although we welcome the advent of the States into the Federal Legislature, it cannot altogether be stated that they will not be benefited, and we do not expect them to come into the Federation wholly with disinterested motives. Federation is going to help British India as well as the Indian States. This corporate and joint working is going to facilitate the advancement and elevation of India as a whole. The States also are going to be distinctly profited in many ways. They will be able to *control the Customs and other policies of the British Indian legislation* in which they are deeply interested and on which the welfare of their own subjects is founded. They have also put forward their claims to share in the Customs duties, though that will now become a Federal question and a part of Federal finance. The indirect benefit to Indian States will be in many ways very extensive. Further, they will remain constantly in touch with British Indian legislation, which is of paramount importance.

My Lord, there are certain other matters connected with this and also with the speech made by His Highness, but I know there are many other speakers, and Your Lordship is very anxious that we should begin a discussion here on another matter. Therefore, I will not dwell on the other questions.

Sir Akbar Hydari: My Lord Chancellor, I shall proceed at once *seriatim* with the order of the questions which you have embodied under Head 1. With regard to sub-heads (i) and (ii), as to the strength of the Upper Chamber, I should like to read the decision that we came to in the last Report of the Federal Structure sub-Committee (page 21, para. 26):—

> "But proceedings simply on the basis that there will be two Chambers, the Upper smaller in size than the Lower, and without any decision as to the relations of one to the other, the balance of opinion was to the effect that the Upper

108 States in the Chamber of Princes represent 514,000 square miles, 60 million inhabitants and 42 crores of revenue, and that with regard to the 127 States which are represented by 12 members, they total 74,000 square miles, 8 million inhabitants and 2 89 crores of revenue. Is that about right?

Sir Akbar Hydari: I have not added up the figures on that basis, and I thought the Census figure for the population of the Indian States was nearer 80 millions than 60 millions.

Chairman: 60 millions is for those States which have special representation in the Chamber of Princes

Sir Akbar Hydari: I have not looked into the figures on that basis. I will give some of my own when I come to that, according to my own classification.

H.H. The Nawab of Bhopal These are 1921 figures.

Chairman: Yes. The reason I have not the 1931 figures is because some of them are not out. These are for 1921.

Sir Akbar Hydari: That was my difficulty also.

There is not the same exclusion in the Budgets of other States of such receipts, or even a severe exclusion of receipts which would more properly come under non-service Budget heads, like capital and other non-recurring receipts. If, therefore, revenue is to be considered, you will have to examine very carefully the figures of the Budget of each State and what they mean.

It is abundantly clear to us all, I think, that, having regard to their number, it is not possible to give individual representation to all the States. It is obviously impossible to give one seat per State and have equal representation for the smallest and biggest in either of the two Houses.

Chairman: I want you to give me, if you can, a figure with regard to one adjective. You say—and I quite agree with you—that it is impossible to give representation to all States. What do you mean by *all* States? How many are there?

Sir Akbar Hydari: Or even all the 112 States.

Chairman: That is what I mean. It is impossible to give representation even to all the States which are separately represented in the Chamber of Princes?

Sir Akbar Hydari: Yes; because it is equally impossible to concede representation for the smallest and the biggest in either of the two Chambers. That is my view. A line will have to be drawn somewhere unless we are to make the two Houses unwieldy beyond the limits of practical politics, and a grouping of States below that line is inevitable. It is in regard to the principle of grouping that there comes in the valuable element of the Dholpur-Pattani scheme (if I may so call it) with which, of course, so far as it creates a bloc of Indian States against a bloc of British India, I do not agree. This scheme gives, if I have understood it aright, a certain number of permanent seats to each of the larger States and

groups. The return of the representatives of any one State to monopolise the college would be avoided by a system of rotation.

Mr. Jayakar: If Sir Akbar is referring to the Dholpur-Pattani scheme, are we going to have a copy of that scheme circulated in order that we may be able to follow these remarks intelligently?

Sir Akbar Hydari: I do not think a copy of that scheme will be necessary for you to follow my remarks, because I am really illustrating them by figures which I obtained before that scheme was put forward. I am simply adverting to the fact that the Dholpur-Pattani scheme has also tried to solve this question, recognising how, on the one hand, there is a desire for every State to have some sort of individual representation, and, on the other hand, how difficult it is to secure that without making the House unwieldy. I will make it clearer when I come to a concrete illustration.

Let me put my ideas before you on this point in concrete shape. They are, let me emphasise most emphatically, very rough, and only serve to bring out more concretely the elements of the problem —a possible method of approaching it. I think we may take it for granted that, if there are to be two Houses, the representation of the States in the Upper House will at least be equal to their representation in the Lower House. For the sake of argument, taking the lowest figures possible—namely, only 150 for the Lower House —and taking only a representation of 33⅓ per cent. for the States in such a small House, there will be only 50 seats to go round. It is clear that the claim for representation purely on a percentage of population basis would ignore the fact that some States, though comparatively small, have a recognised position, more or less indicated by gun salutes, which cannot be ignored. Taking for granted that all the 21-gun salute States will be represented, these number five, and contain over one-third—to be more accurate, 37·81 per cent.—of the total Indian States' population. Then there are six 19-gun States, which amongst them contain almost 11⅓ per cent. of the population. These are Kolhapur, Travancore, Indore, Udaipur, Bhopal and Kalat. These must all have seats. Then come the 17-gun States, which are 13 in number, absorbing over 15 per cent. of the population. They are Rewa, Cochin, Bahawalpur, Patiala, Bharatpur, Bikaner, Bundi, Jaipur, Jodhpur, Karauli, Kotah, Tonk, Cutch. These all must have seats. There are thus 24 seats allotted with due regard to all the factors, including dignity, and absorbing 64·24 per cent. of the population—24 seats allotted out of 50 seats.

There remain then a number of States which must be represented in some way, and they can either elect their representatives through the Chamber of Princes or arrange on a territorial basis. If the arrangement is on a territorial basis, some such arrangements as the following might be adopted. I am simply indicating a way in which the problem can be approached, and I am trying to make my illustration concrete. For Assam and Bengal States, 1; for Bihar and Orissa States, 1; Bombay States, 1; Central India States,

2; Punjab States, 1; Rajputana States, 1; Western India States, 3; United Provinces States, 1; Central Provinces States, 1. You will observe that I have allowed for territorial blocs which are already well represented by individual States—for example, Rajputana only gets one. I have followed the reverse process for Western India and Central India, which do not come in for individual representation. You have thus now 24 seats for States of higher dignity and 12 for groups of smaller States. The total is thus 36, leaving 14 for disposal.

It is understood that the five major States all claim special representation, and the other four of these five are prepared to concede a premier position to Hyderabad, but are not inclined to make any concessions to each other. In any case, Hyderabad would be entitled on a population basis to 8, but would be content with 6. These supplementary seats might be arranged somewhat as follows. Hyderabad 5, Mysore 3, Baroda 2, Gwalior 2, and Kashmir 2 That is how the remaining 14 seats go round. You will find that these represent the population covered by the areas, and the votes follow that. I hope that I have made it abundantly clear that, even taking the number at its worst, namely, 50 seats only, it is possible to make them go round.

I will now argue as to why we should really try to limit the number as much as possible. My reasons are these. Not only would a system of grouping ensure that the Federal Legislature, whether unicameral or bicameral, was kept small in numbers, but that, in so far as the States are concerned, the quality of the Members was good. Whereas it would be quite possible for groups of the smaller States to select men of real eminence as their representatives, it would be beyond the resources of each small State to do so. It is extremely probable that, having regard to the nature of the subjects which we propose to make federal, the smaller States, which presumably would be grouped regionally, would have a common interest in Federal questions. Moreover, some system of rotation would provide that each individual State within the group would get a chance at stated periods to send a representative on behalf of the group, so that no one member of the group would be able, for all time, to monopolise that seat. I am so convinced of the necessity of small numbers that, for my part, I should not hesitate to sacrifice one or two seats which would be my right on the basis of area, population, Federal content, and dignity, in order to keep down the numbers of the whole.

I come now to question (iv), which is:—

"On the assumption that, at the outset, some States decline to enter the Federation—

(a) On what principles is the voting strength of the States in each Chamber to be determined from time to time, until such time as all the States become Units of the Federation?

(*b*) To what minimum extent must the adherence of Indian States be secured in order to justify the initiation of a Federal Constitution?"

As regards the first part of the question, I envisage the procedure to be somewhat as follows. From the outset it should be decided what the representation of each State or group of States will be if all the States enter the Federation. The quota of those States who are not at any time members of the Federation should be distributed proportionately among the States who have joined the Federation. The latter would give these additional seats up as the States joined. The question as to which State or States should give up these supplementary seats first may be decided afterwards. For example, they might be given up by rotation, beginning with the State that has the largest quota to give up. This is my answer to that question.

My answer to question (iv) (*b*) is that, if States representing 51 per cent. of the total population under Indian States' rule decide to adhere to the Federation, that should be taken as sufficient to justify the initiation of a Federal constitution. In this connection talking by numbers is misleading. The first five States contain 37·81 per cent. of the total Indian States' population; the next seven, 14·67 per cent. That means [illegible] if the first twelve States in respect of population join the F[illegible]n, you will have States representing just over 51 per cent. [illegible]dian States' population adhering to the new constitution.

Question (v) is not one which [illegible] States, at least at present.

Chairman: You have given us v[illegible] ur personal views, for which we are all very grateful; b[illegible] decide upon this? Would some Committee of the Prin[illegible]

Sir Akbar Hydari: Yes, I think [illegible] ressing the same views as Mysore.

H.H. The Nawab of Bhopal: I ha[illegible] that we have listened with great interest to what [illegible] said; but I should like to make it definitely clear t[illegible] of the distribution of seats among the States *int*[illegible]ern of the States, and it has already been decid[illegible]ely the States) shall settle this matter amongst [illegible]n as the total number of seats to be allotted to th[illegible]d This question does not concern this Conference

Sir Akbar Hydari: I entirely agree [illegible]ighness has said—that it does not concern this [illegible]ve this merely as an illustration to show—in r[illegible]n you put to Sir Maneckjee Dadabhoy—that ev[illegible]ed in such a way that they would b[illegible]

Sir Mirza Ismail: I am afr[illegible]ess of Bhopal; and I think the f[illegible] here seems to be sufficient justific[illegible]cial

independent committee to decide this question. It is a very difficult and intricate problem. It is impossible that the States can ever come to any agreement on the subject of the distribution of seats. The easiest and simplest way is to refer it to an independent and impartial committee.

Mr. Iyengar: Have I understood Sir Mirza correctly in considering that this independent and impartial committee will deal with the general allocation of seats in regard to the Upper and Lower Chambers, or only with the very restricted question as to how the seats shall be distributed among the Princes?

Sir Mirza Ismail: You will have to have an extensive grouping of the smaller and the smallest States. It is a very big question —how these various States have to be grouped together, and how many seats are to be allotted to the bigger States. All these questions would have to be gone into very carefully by the committee. Let me emphasise the character of the committee. It should be a perfectly independent committee, on which there should not be a single representative of the Indian States, so that everybody might have the fullest confidence in its recommendations.

Dr. Ambedkar: Will the recommendations of the committee be final?

Sir Mirza Ismail: They would have to be submitted to the Viceroy and by the Viceroy to His Majesty's Government. The decision of His Majesty's Government should be final with regard to this matter. As to those States which do not accept the seats— I mean whatever seats have been allotted to them—it would be open to them to stand out of the Federation. There must be some finality in this matter. I think a tribunal or a committee like that would be in the best possible position to decide a question of so much complexity and difficulty.

H.H. The Nawab of Bhopal: Lord Chancellor, I have spoken in the name of the Chamber of Princes, whatever that may be worth to you.

H.H. The Maharaja of Bikaner: Shall we have an opportunity later, Sir, of dealing with some of these points?

Chairman: Certainly.

H.H. The Maharaja of Bikaner: In the meanwhile, all I need tell you is that yesterday, after my general observations as far as Head I was concerned, I was merely voicing the views generally of the Indian States Delegation.

Sir Mirza Ismail: I am speaking not only on behalf of Mysore, but also of the two biggest States in Rajputana—Jaipur and Jodhpur—which I have the honour to represent.

Dr. Shafa'at Ahmad Khan: Lord Chancellor. It is a great handicap to follow an experienced statesman, and I am speaking, therefore, under a sense of disadvantage; but, Sir, as a member of the Committee, I would like to put a few points before this

body. The first point which we have to decide is the total strength of the Lower Chamber. Lord Chancellor, I suggest that the total strength should be 300 Members. I do so because I regard 300 as a reasonable figure which will satisfy the requirements both of Head 1 was concerned, I was merely voicing the views generally efficiency and of representation. We cannot have too large a body, because if the body at the Centre is too large it will not be able to do really good and efficient work.

Sir Tej Bahadur Sapru: You want 300 for the Lower House?

Dr. Shafa'at Ahmad Khan: 300 for the Lower House, yes. If, on the other hand, it is too small, the constituencies will be so large and so unwieldy that it will be quite impossible for the Members to keep in touch with their constituents. There is another reason, Lord Chancellor, why I advocate this number, and it is this. India is a country of long distances, and it is very difficult for a body of, say, 600 or 800 persons—to take figures which have been proposed by some members—to secure the presence of all its Members. It would be difficult for all the Members to attend the Lower House regularly. Moreover, the class from which the Members come is not what I may call a professional class. We have, of course, persons who devote their whole time to political work; but, apart from that, we have a very large number of persons who regard it as their duty to devote some part of their time only to political work, and who cannot therefore attend the meetings of the Assembly regularly if the meetings are too long.

With regard to the Upper Chamber, I think there should be 150 Members. An Upper Chamber should, I think, in all cases be much smaller than the Lower Chamber, because the Upper Chamber will, I believe, do very solid work and very good work if its numbers are kept very small. The Senate of the United States of America has, I believe, 96 Members; in the Upper House of the Union of South Africa there are, I think, only 41 Members; while in Australia the num[illegible] is also not very large—I do not think more than about 50 a[illegible]

Dr. Ambedkar: What [illegible] ılation?

Dr. Shafa'at Ahmad Kh[illegible] ɔulat[illegible] the United States of America is large enough.

Dr. Ambedkar: Compar [illegible] f I

[illegible]. *Shafa'at Ahmad K*[illegible] n [illegible] ulation in [illegible]se; but in this case [illegible] o [illegible] y bigger [illegible] Senate of the Uni[illegible] m [illegible] as only [illegible]s.

[illegible]t point, Lord C[illegible] e [illegible] h the [illegible]t of the number [illegible] t [illegible] ritish [illegible]e made. Tha[illegible] of the [illegible] and if we [illegible]ly w[illegible] s[illegible] ıieve what [illegible] con[illegible] si[illegible] I submi[illegible] ciple

in view. If we do not keep certain principles in view we are likely to frame proposals for the representation of the British Indian Provinces and for the Indian States on an inconsistent basis. I propose that the basis of apportionment should be population both in the Lower Chamber and in the Upper Chamber, both for the Indian States and for British India. That is my proposal, and I make it because, if we introduce any other principle, I feel it will lead to infinite confusion, complexity and inextricable difficulties in the working of our constitution. We know how difficult it would be to assign seats among the States themselves. We have to take not only the question of population but also it is suggested, such questions as salute, area and so on. Various bases have been suggested. If we try to work out any scheme on the bases suggested from various quarters, it will be found that the number of Members of the two Chambers will become too large and they will be unwieldy; and there will be no finality or complete satisfaction so far as the representation both of British India and of the Indian States is concerned. I submit, therefore, that the population basis is the safest, the soundest, and on the whole the best which could be adopted in considering this question, I therefore suggest that the Indian States should be given representation both in the Lower Chamber and in the Upper Chamber according to population. It is said that, in considering the representation of the States, regard should be had to areas. I do not agree at all with this view. If we have to pay regard to area, let us consider what would happen, for instance, in the case of the Sahara Desert, if we had a Union of Africa. Are we going to give full representation according to area to that large and inhospitable tract? Or take the Gobi Desert. I submit, therefore, that area should not be taken into account.

Then, Sir, it is said that, at least so far as the Upper Chamber is concerned, there ought to be equality of representation of the different Units, and that the Indian States should have 50 per cent. of the seats because, in the United States of America, every State has the same number of Members in the Upper House. I beg to submit, however, that the conditions in the two countries are entirely different. You cannot compare the heterogeneous condition of the Indian States with the absolutely sovereign character of the American States before they joined the Union. Before they joined the Union they were absolutely sovereign in the truest sense of the term, and they came and joined it because they had been told that, so far at least as the Upper House was concerned, they would be given equality. If, in India, the Provinces and States occupied precisely the same position as the American States occupied in 1787, I would certainly say that there might be equality of representation in the Upper House. But what do I find? On the one hand I find the highly efficient and developed Provinces of British India, possessing an organic unity and uniformity, which have the stamp of an all-India character, if I may say so, on them. On the other hand I find levels of cultural, political, economic and administrative development which vary considerably. Unless and

until, therefore, there is complete similarity between the conditions of the two sections of the country, it is very difficult for us to concede that point.

Another argument which has been adduced in certain quarters is that the German Federation before the War also conceded adequate representation to the States; but may I point out that the very principle of the German Federation was inequality. The German Federation was based essentially on the principle of inequality. You had at the top Prussia, and then you had a number of other States possessing votes ranging from six for Bavaria to one for fourteen States. It was because of the inequality that the Federation was brought about.

It is also said that, in the States possessing large areas, there is bound to be expansion of population later on. Well, that can be met, as it has been met in many constitutions, by laying down a provision that after each Census (say, after 10 years) the proportion of the Indian States as well as of the British Provinces, should be increased both in the Lower and in the Upper House.

Sir Muhammad Shafi: Readjusted?

Dr. Shafa'at Ahmad Khan: Readjusted, yes. This is done in Canada every 10 years, in Australia every 10 years, in South Africa also; and I may say that it is provided for in the new German Constitution and other constitutions. So that argument can be met by the successful working of this provision in many other constitutions.

I now come to the next point:

> "On the assumption that, at the outset, some States decline to enter the Federation—(*a*) on what principles is the voting strength in each Chamber to be determined from time to time......?"

This is a point which has cropped up whenever there have been projects of federation. It is not an entirely new point. This difficulty has been faced by all the framers of constitutions before, if I may say so. I will take up (iv) (*b*), first, with your permission:

> "To what minimum extent must the adherence of Indian States be secured......?"

I propose that, unless and until at least half of the States, possessing half the population—about 40 millions, that is to say—come in, the initiation of a Federal Constitution cannot be justified.

Sir Muhammad Shafi: 79 millions is the total population.

Chairman: You are in agreement with Sir Akbar. So long as there is 51 per cent. of the population, you say "go ahead."

Dr. Shafa'at Ahmad Khan: Yes; but if other States do not join later on, if 50 per cent. come in, I should give them a voting strength in both the Chambers only according to the amount of their actual representation in the respective Chambers. I would not allow them to exercise all the votes to which they would be

entitled if every one of them joined the Federation. This provision would also simplify the difficult and intricate problem of grouping. So far as this question is concerned, I am not going to enter into it, because I believe it is entirely the concern of the States and that the British Indian representatives have nothing to do with it. The grouping may be effected according to any principle that may be arrived at among the States themselves; but I beg to submit that, if this principle—the principle of population—is followed throughout, then their difficulties also will be greatly simplified and lessened, because they will get representation in the Lower Chamber, say, at the rate of about one Member per million of population, and one per two million in the Upper Chamber. If 50 persons come in in both the Chambers, we can make the necessary readjustments from time to time; but I am not prepared—and I think very few persons on this side are prepared—to give them the votes to which they would be entitled if all of them joined the Federation. The principle in all federations has been that a State should be given the right to vote in either Chamber only if it had joined the federation.

Dr. Shafa'at Ahmad Khan: I now come to the last point. Here again I would apply precisely the same principle—the principle of population—both in the Lower House and in the Upper House. At the present time, the amount of representation enjoyed by various Provinces, both in the Lower Chamber and in the Upper Chamber of the Central Legislature, is not based on any sound lines. Some Provinces have been given a larger representation than others.

Chairman: Then you would rather suggest, for example, that the Central Provinces, which have only 13 millions, if I remember aright, while Bengal, for example, has 46 millions, should only have about one-third of the representation of Bengal?

Dr. Shafa'at Ahmad Khan: It should be done according to population, whatever it may be. The Franchise Committee of 1919 allotted seats to the various Provinces on no principle at all. The three Presidencies—Madras, Bengal and Bombay—were given a disproportionate amount, while the United Provinces and other Provinces were not really given their due share.

Chairman: Would the effect of that be that the Punjab would only have half the number of places that Bengal had?

Dr. Shafa'at Ahmad Khan: I think it would be so.

Chairman: And, for example, the Punjab would only have half the number of Members that Madras had?

Dr. Shafa'at Ahmad Khan: Yes.

Mr. Joshi: Sir, Before I offer any remarks on the particular subjects, I would be permitted to make one or two general observations. In his speech, His Highness The Maharaja of Bikaner yesterday said that some members of this Committee maintained that they had a right to interfere in the domestic affairs of the Indian States. I feel that, so far as I could follow the proceedings

of this Committee, there was not a single member who maintained that he would advocate interference in the domestic affairs of the Indian States. What some of us did maintain was that, if the Princes desired to enter the Federation, the matters which are concerned with that Federation are not domestic affairs of the Indian States—they are matters of common concern, and to that extent the approval of both British India and Indian India is absolutely necessary. If interference in these matters is to be regarded as interference, then we claim that it is a legitimate interference. We feel that the character of the Legislatures in India is not a domestic affair of the Indian States; it is a matter of common concern. And when we claim what the character of the Federal Legislature should be, we claim that we offer no interference in the domestic affairs of the States; and if that is an interference, we again claim that it is a legitimate interference.

May I also say that it was said that there were some members who had imputed selfish motives to the Princes in joining the Indian Federation. Again, Sir, I have not heard any member attribute merely selfish motives to the Princes. I myself referred to this point; and I made it quite clear that the Princes are desirous of entering the Federation both out of consideration for their own interests and out of patriotic motives.

H.H. The Maharaja of Bikaner: I think the words you used were "selfish and patriotic reasons."

Mr. Joshi: I maintain that the Princes are desirous of entering the Federation out of consideration of their own interests, as well as out of patriotic motives. I feel that, if the Princes are entering the Federation only from philanthropic motives, they are not likely to secure the kind of Federation which will be in the interests of the whole of India. I feel that the Federation must serve the interests of British India as well as of Indian India.

Chairman: I rather want to think of India as India; not as British India and Indian India. Let us drop the adjectives.

Mr. Joshi: His Highness made an appeal to the members representing British India to place greater confidence in the representatives of the States. I felt, on account of the unique position which His Highness The Maharaja of Bikaner holds, that his appeal should have been for greater mutual confidence rather than an appeal for greater confidence in the Indian States. It is, I believe, a greater measure of mutual confidence that will lead to the proper settlement of this question, rather than one side putting greater confidence in the other.

I wish now to discuss very briefly the various sub-heads. The first one to which I will refer is the total strength of the two Chambers. My own view is that, the larger the number, the better it is for the representation of the various interests in India. I would roughly suggest that the number should be about 600 for the Lower House. My object in stating this number is that, for the proper representation of the various interests and communities, it is

a better plan to be able to secure multi-Member constituencies of manageable size I feel that a constituency for an area of manageable size should not include more than an area equal to the average area of two British Indian Districts. A District is a defined term in India. There would be about 125 constituencies. If we are going to have multi-Member constituencies, there should be on an average three, if not four, Members for each constituency. I would have on an average between three and four Members for each constituency, so that we may have, out of this number, a representation of the majority population a representation of the minority communities, and a representation of the major economic interests. I feel that this arrangement is a much better arrangement if we take a longer view of our needs. Therefore, unless we have a sufficiently large number, approaching 600, we shall not be able to get a multi-Member constituency of a manageable size. For that reason I have suggested the number 600. It is quite possible that, when a committee is appointed, and when we know all the facts as to the number of Provinces, and the method of the representation of the States, we may be able to fix a definite number; but my view is that it cannot be less than 600. I also say that it should not very much exceed 700. I would put the number between 600 and 700.

As regards the Council of State, I would put the number at approaching 400; and making an adjustment of the Provinces, the numbers in the Legislature, and the representation of various interests, might increase that number to 500 I would, therefore, keep the number between 400 and 500. I feel here again that a larger number will facilitate the proper representation of the various communities and interests.

Sir Maneckjee Dadabhoy: At any rate, His Highness The Maharaja of Bikaner will have no grouse if it is 500.

H.H. The Maharaja of Bikaner: I do not know about 500

Mr. Joshi: Taking it for granted that the election of the Upper House will be by the Members of the Provincial Legislatures, still, if all interests are to be represented, the number of Members to be elected by each Provincial Council must be sufficiently large. Unless that number is large, many interests will go without representation, or we shall have to find methods of representation which will not be satisfactory to those interests. I feel that, if we keep a larger number in view, that will also be convenient for the proper representation of the States. I know that it may be said that it is not our business to discuss how the representation of the States should be effected; but it is open to us to say that, if we keep in view a large number, it will be more convenient for the representation of the States. It is not quite correct to say that it is not the concern of the representatives of British India how the States should be represented. I feel that the settlement of this great issue which is before us depends also to some extent upon how the States are represented. If every State, or the larger number of States, are

to be represented only by one Member, we shall have to consider how the representation which is claimed by the minority communities is likely to be affected. The minority communities have claimed a representation. The Muslim minority especially has claimed a representation of $33\frac{1}{3}$ per cent. of the total Federal Legislature. We are not yet told by Their Highnesses whether they propose to reserve any proportion of their representation for, say, the representation of the Muslim interests, or for the representation of the Depressed Classes, or for the representation of Labour. They have not stated anything upon this point. I do not know whether they propose to say anything upon the point; but I feel that, unless there is some fair representation of the different communities and interests within the representation of the States also, there is not going to be a settlement in this Conference at all. For that proper representation of the various interests, even from the quota of the Indian States, what is really necessary is that the number of representatives should be large, and that there should be multi-Member constituencies. It is on that account that I feel that the institution of multi-Member constituencies and the largeness of the number will help in the solution of the most difficult questions which are before us.

I shall now, Sir, take up question (iii)—the basis of the apportionment of the total number of seats between the States and British India. On this point my view is that the seats in the Legislature should be distributed between British India and the Indian states, and even between the Provinces in British India, on the only possible basis—that of population. I feel, Sir, that if all the difficulties that we are likely to meet in this Conference are to be avoided, it is better to accept a principle which will be found by all to be a reasonable principle. Then everybody should accept that principle: and then only will there be a settlement. From that point of view, I feel that there is no better principle than the principle of distributing the representation according to population. Judging by that principle, I feel, Sir, that the proposal made by His Highness The Maharaja of Bikaner is likely to lead to difficulty. He is asking on behalf of the States a representation in the Lower Chamber of $33\frac{1}{3}$ per cent. He is asking for a weightage of 10 per cent. over the population basis. In the Upper Chamber he is asking for a 50 per cent. representation. According to population the representation should be 23·8 per cent.; so that, in the Upper Chamber, the States are asking for more than double their representation on the population basis. Whatever may be the feeling of the people who are gathered round this table, I feel that a demand to have a representation more than double the share which is due to that part of the Federation on the basis of population is likely to create difficulty. I therefore feel that the distribution should be merely on the basis of population.

There is, Sir, another justification for that principle. His Highness The Maharaja of Bikaner stated that the States will not agree to any other but an indirect tax. If you now take that as a

basis, and if you consider the contributions from the various Units of the Federation to the Federal Government, you will come to the conclusion that the contributions of the various Units of the Federation to the Federal Government will be in accordance with their population. Sir, I am pointing out that, if the distribution is likely to be based upon the revenue which each Unit brings to the Federal Government, then the basis of population is the only basis that will be arrived at. If the taxation is to be indirect—if the taxes are customs and the salt tax—then the taxes are bound to be contributed on the population basis. Each State will contribute revenue to the Federal Government in proportion to its population, roughly speaking. Judging the question, therefore, on the basis of the contribution made by each Unit to the Federation in revenue, I feel that the population basis will be found to be the only just and fair basis.

Then, Sir, His Highness, on behalf of the States, claims that, whatever be the number of States that join the Federation, those States must get the total quantity of representation which may be allotted to all the States. I did not hear any argument in justification of this claim. I know that His Highness of Bikaner is going to speak later on, and we shall all be very interested to hear any justification of this. I myself feel, Sir, that, so far as I can judge, there is no justification for this claim. If the States were one single unit acting on behalf of all, then I could understand that group saying that any one of them can exercise the vote on behalf of all; but if the States cannot do that, I do not think there can be any justification for the claim that, even if only a few States join, they should get the full quota of representation which is due to the whole of Indian India. I am not, therefore, in favour of the claim made on behalf of the Indian States.

I do not wish to speak much on the question of the division of representation between the different provinces. I again hold there that the fairest way of distributing the representation in the Federal Legislature between the Provinces is on the basis of population. I quite realise that there are some Provinces which may have their representation reduced, while there are some Provinces which may get more representation; but, Sir, if this question is likely to be settled, it must be settled on the basis of justice and fairness. I fully realise that my own Province will lose its representation to a great extent; but I feel that, if my Province wants to join the Federation, it must accept a principle which is fair and which is just.

Mr. Sastri: Has your Province or any British Province a choice?

Mr. Joshi: Well, the Provinces may not have a choice; but, if the Provinces want now to have a Federation, and a Federation of a right kind, of a just and fair kind, they must accept a principle which is a fair principle. I therefore feel that we should accept the principle of distributing the representation between the Provinces of British India on the basis of population.

Sir, before I close I want to say one word as to this. Some of us, who differ from the views of some distinguished leaders in this Committee, are told that we do not face the realities. I do not consider it to be a discredit to be an idealist; but, Sir, I hold that the principles which we enunciate and the proposals which we make are made with a full realisation of the realities of the situation. But there is this difference: some people understand some realities but forget the other realities. When we were asked to face realities, what was meant was that, if we insisted upon certain things, the Federation might not come into existence. I feel, Sir, that if the members who are gathered round this table make proposals and then insist that, unless those proposals are accepted as they stand there will be no Federation, this is not facing realities. This is facing ultimatums; and I hope there will be nobody in this Commitee who will confront us with such ultimatums. We have gathered here to discuss different proposals, and nobody should make us feel that, unless we agree to certain principles, we shall not be facing realities.

(*The Committee adjourned at 1-5 p.m. and resumed at 2-30 p.m.*)

Mr. Sastri: Lord Chancellor, May I begin by making one or two general observations? Last year, federation appeared to most of us as the only solution of the difficulties in which India found herself; and every section of those represented here was willing, in order to make federation possible, to meet the views of the other sections and agree to as many modifications of their own pet ideas as might seem necessary for the purpose. I was very happy to hear yesterday that the Maharaja of Bikaner, who represents the Order of the Princes with such great ability, was still an adherent of federation. There could never have been the slightest question on that head; if any single person here drives this coach of federation it is His Highness. Our debt to him is incalculable.

For that reason he appealed to us yesterday—not for the first nor even for the second time—to appreciate the difficulties of the Princes and the governments of the Princes, and to make as large allowances as possible for their special points of view. I believe, Lord Chancellor, that upon this side there has been, in general, no inadequate response to that demand. The difficulties of the Princes are only partially known to us—the rest can be guessed from occasional references that occur in the speeches made by their representatives—and I, for one, am prepared to believe that the task to which the Chancellor of the Chamber of Princes, and those who work with him, have set their hands, is by no means easy. I am willing, therefore, to go very much out of the way, as it were, to meet these very special difficulties.

But there is one point of fact which requires, in my judgment, to be put right in this matter. In speaking about federation and the work of this Committee in India, His Highness of Bikaner and some other members of his Order have constantly said that we

on this side requested them to enter into a scheme of federation and that they willingly agreed to meet our request. This statement has been so often made—and it was made again by His Highness yesterday—that it acquires some little importance; for it is made the basis of a request, often repeated, that we on the British Indian side should therefore, for the reason that we were *the initiators of this idea, make it easy for the Princes to come in.*

My Lord, that is only a correct representation of what took place at the final stage when we met here last year. The real fact is that British India alone was concerned in the political agitation that led to the summoning of this Conference. We always thought that it was British India that was going to have Dominion Status; and for my own part, as you all remember, I admitted that I was a slow convert to the federation idea.

Lord Chancellor, if I may lift the veil somewhat from the proceedings that went on in my own heart, I became such a convert because of the blandishments of His Highness of Bikaner and others here. I listened to him and to other representatives of the Order, and especially the able and talented Secretariat that have been carrying on propaganda on behalf of federation. It is therefore the Princes that started the idea of federation—it is the Princes who drew us in—and it would not be too much to ask, therefore, that from the Princes some consideration is due to us for the difficulties of the British Indian side; and that, instead of all the demands proceeding from one side and the concessions from the other, sometimes we might also make requests of Their Highnesses, and they should be willing to listen to our difficulties.

H.H. The Maharaja of Bikaner: Reasonable give and take.

Mr. Sastri: Now, His Highness yesterday mentioned the figure of 250 as perhaps the safest and soundest figure for the Upper Chamber. We all thought last year of a much smaller figure. I remember His Highness of Bikaner always foresaw that pressure would be brought to bear from one side and another and that the number would have to be increased. I admire his prescience in this as in other matters; but His Highness did not make it clear to us how he arrived at the figure of 250. Apparently, 125 is the figure to be set apart for the representation of the Princes in the Upper Chamber, and thus he arrives at a total of 250, because he gose in for the 50/50 basis. Now, how is the 125 arrived at? His Highness again was silent on the point; but I gather that one of their difficulties is that those Princes and States which are, in their own right, members of the Chamber of Princes, desire that they should have at least one Member to represent them in the Upper Chamber, and that, as that number exceeds 100 by a small figure, we have to provide for 125. I think that roughly represents the process of reasoning by which that figure is arrived at. I sympathise very much with that idea. It is impossible, when certain Princes find places in the Chamber in their own right, to go and tell them that they should come into a Federation in

favour of which they part with some of their sovereign rights, but that, neither in the Upper nor in the Lower Chamber, will these weighty and considerable Princes—some of them at least—find representation.

I am willing, therefore, that we should take the figure so far as the Princes are concerned, up to 125. Then what follows? I part company with His Highness as to the 50/50 basis. I adhere still to the proportion which I mentioned last year—40 to 60. In that case the figure in the Upper Chamber would be much larger than 250; possibly it would be something like 350 or 375. And if that is the case, as in this country, we shall have the two Chambers nearly equally large numerically. For the Lower Chamber our idea roughly is that there should be one representative to each million of India's population; and as it would be impossible to keep it rigidly at that figure, we must have some higher figure. Four hundred, I should think, would be the least that would satisfy the demands of the situation. Mr. Joshi apprehends, not without reason, that under pressure from the various interests and communities that ask for special representation—and not only for special representation but for special representation with weightage—it will be necessary to bring the figure to somewhere in the neighbourhood of 600. I do not know; but it is much easier to increase the figure, I am sure, than it is to keep it within bounds. However, about 350 for the Upper and 400 for the Lower appear to me at present to be the figures that we may take as our starting point.

There is one other matter of importance to which it appears to me that I had better draw the attention of the Committee at once. An idea has been put forward, in answer to one of the sub-heads of your questionnaire, that the States which initially come in, although only a fraction of the total number of States, should get all the representation that we assign to the States as a whole until such time as other States come in, when, by prescribed rotation, seats should be surrendered by those that enjoy extra representation. I still do not understand the principle upon which this arrangement is proposed. I have heard in regard to physical nature that nature abhors a vacuum. Is it also to be understood that, if certain States should not come in, their seats should not lie vacant for them until they come in, but that somebody should snap them up? Let me take Mysore as an instance of a State that chooses to stay out for a time. I take Mysore as an example because it seems to me the least probable. Supposing Mysore had two seats under our scheme, and it did not come in, say, for two years, is it more in the nature of things that the adjoining Presidencies of Madras and Bombay should get that representation, or that Jaipur and Jhodpur and Kashmir should claim it? Is it to be understood that, as between the Indian States, there is some subtle bond which makes them the residuary legatees of each other? I cannot see why this is put forward. On the other hand, I heard His Highness of Bikaner himself say yesterday that, as he foresaw

the working of our Legislature in the future, there could be regional bonds created rather than bonds upon the question of whether it was British India or Indian India. If that is the case, it is much more natural for these vacant seats to be given to neighbouring British India than to other Indian States. But I am not asking for that; I am only asking that the seats which remain vacant should remain warm for those States to which they naturally *belong. I cannot see how States, for instance,* like Kashmir or Jodhpur should, relatively to British India, relatively to Mysore, relatively to Madras and Bombay, not only start with an additional representation due to weightage, but, furthermore, receive *an accession of strength by reason of some other States standing* out for the time. It seems to me that that is an arrangement for which very little justification can be pleaded.

There is another point to which I would like to draw the attention of the Committee. My friend, Dr. Shafa'at Ahmad Khan, and Mr. Joshi to some extent following him, have pleaded that, in both Houses, the representation should be determined according to the population of the Units represented. Now, My Lord, if we were speaking of a homogeneous India, that arrangement would work very well; but India is not homogeneous politically or racially or by any other criterion that we may think of. It is not possible to apply any one principle rigidly and without qualifications Population is perhaps, on the whole, a most just and sound factor to be taken into consideration; but other factors have also to be taken into consideration. So that, when we distribute the seats between British India and the Indian States, it is not possible to confine ourselves solely to this criterion. I go further and say that, even as between the Provinces of British India, it will not be possible to carry this test too rigidly into our arrangements. I was a member of the Franchise Committee which settled the proportions in the various Legislatures last time, in the year 1920. As we went round and enquired, we found very different considerations brought to bear upon our work: population, area, prestige, representation hitherto enjoyed, the enterprise and wealth of the populations, and so on, and so on. I do not believe that any Franchise Committee that we may appoint in future will be able to reject all these considerations, and confine itself to this criterion of population alone. We must be prepared to accept various relaxations *of this principle, however sound it may appear to be,* and however just and equitable it may appear to be, and to abide by arrangements which an impartial and influential committee, to be appointed hereafter, may determine. I do not think that we are *going, round this table, to settle this problem altogether.*

There is one thing to which this last observation naturally leads. Their Highnesses will allow me for a moment to refer to this question of the distribution of the Indian India quota among the various States. This subject is so important that, although I am unwilling, I feel almost compelled to make one observation. The Indian States, as has been repeatedly pointed out, include a very

large number of unimportant entities which have been included in the list. His Highness The Maharaja of Bikaner has pointed out repeatedly that we on this side are wrong to mention the figure of 570 to 600. He says that this large figure is mentioned merely to frighten everybody. That may be the case; but in all his statements I have never yet met with his own figure. What are the criteria according to which he would exclude some of this large number which any Government of India list gives us; and, so excluding them, what is the residual figure that he gives? No one has made a pronouncement upon this subject hitherto, and I should very much like that matter thrashed out a little more so that we can see the magnitude of the problem. I am mentioning this only to show that, while we are all agreed upon general considerations, no one (not even His Highness The Maharaja of Bikaner, whose knowledge of this matter is unrivalled) is able to give us a satisfactory solution. The satisfactory solution is very difficult to arrive at. Already this morning the representative of one of the very important States in India, not included in the Chamber of Princes, has definitely told us that the distribution of seats as between the Princes is so difficult a matter that it could not be left to the Chamber of Princes, or to any of its representatives, but it should be referred to an impartial Committee. Machinery of that kind it may be necessary to devise; and, from this side of the table, I wish to make an appeal to Their Highnesses to take the lead in this matter. Do not consider that, in giving advice, or in making a suggestion, we are overstepping the bounds of propriety. Your Lordship is never tired, when we speak of this subject, of reminding us that we must think of India as a whole, and not of this section or of that section of India. The distribution of seats among the Indian States is a matter upon whose settlement so much depends for the safe working of our federal machinery. I would, therefore, beg Their Highnesses to take Sir M. Ismail's suggestion into very earnest consideration, and, if possible, to arrive at some solution of the problem which will embrace not only that part of the Indian States which are represented in the Chamber, but those others also which, either by their own act, or by the arrangements under which the Chamber is constituted, do not yet play a part in the deliberations of that Chamber.

Sir Samuel Hoare : Mr. Sastri has explained eloquently, as he always does, the process of conversion through which we all went last autumn. He has told us how the words of His Highness The Maharaja of Bikaner converted us all to the idea of all-India Federation. I went through the same process as Mr. Sastri; and I should like to say—and this is my first observation—that I am just as anxious to see an effective all-India Federation brought into being as I was last autumn when His Highness The Maharaja of Bikaner and his Princely colleagues first made the proposal to the Conference. When I say "an effective all-India Federation," I mean a Federation that is based, first of all, upon a definitely federal foundation; and I mean, secondly, a Federation with defi-

nitely federal organs to carry out its duties. I do not now wish to go into details upon these two main conditions. During the course of our discussions we shall have ample opportunity of discussing the details that arise in connection with them. To-day I would only say in a sentence, taking up in particular the point of view expressed by the Princes this morning, that I do regard as one of the conditions of an effective all-India Federation a sufficient participation of the Princes Here and now I do not want to be drawn into a controversy about numbers. I would much rather hear the views of gentlemen around the table upon that very important point; but I should like to make it clear that, so far as my own views are concerned, I do really regard an effective participation of the Princes at a reasonably early date as one of the basic conditions of the constitution that we are discussing.

When, Lord Sankey, I come to the further questions of detail that have been discussed this morning—what that percentage should be, what numbers of seats the Princes should have in both the Chambers—I would much rather not to-day state my view as definitely made up upon either one or the other. I do quite honestly wish to hear the views of gentlemen around the table, and I do most sincerely wish to see agreement reached between the various sections of Indian opinion gathered together around this table. If I might make nothing more than an *obiter dictum* to-day, I would venture to say that it seems to me personally that the 51 per cent. of the population, the test suggested by Sir Akbar Hydari, is not a very full representation of the Princes I do not wish to say more than that to-day.

Then, when it comes to the numbers, here again I would very much like to hear further discussion around the table from representatives of various bodies of Indian opinion. Let me only say at this stage that, speaking for myself, I am genuinely nervous of making these two Chambers too big. I do not say that for any partisan, political reasons. I do say it because I do believe that the kind of Chambers that we want are Chambers of a manageable size, that can effectively carry out the explicit Federal duties that we are assigning to them. And therefore, if I may say so at this stage, I somewhat regretted the tendency that has shown itself to-day—exhibited even in Mr. Sastri's very interesting speech—of putting these numbers higher and higher; but at this stage I would not say more than that single word of caution.

Then there was another detail, a very important detail, that was raised this morning, namely this. Supposing a large number of Princes do not enter the Federation at once, what is to be their voting power until the full number enters? I understood Mr. Sastri to say that he thought that the voting power should be strictly proportionate to the number of Princes actually in the Assembly at a given time. Now, that sounds all very well from a logical point of view, but we must remember this, that in creating this Federation we are bringing together two separate interests, and I myself can quite believe that the Princes would say them-

selves that they really would be placing themselves at an unfair disadvantage if they entered the Federation, even though it be in comparatively small numbers, without having an effective voting power. I venture, therefore, just to throw that out in the discussion as a word of general caution.

Then, my Lord Chancellor, my last observation here is this. In all these questions, I was very much struck by the concluding observation of Mr. Joshi this morning. Mr. Joshi stated his view very clearly and very ably, but he said quite definitely at the end that these are not matters for ultimatums from one side or the other; and the last thing in the world that I wish to do—and I believe here I am speaking for all my British colleagues—is to lay down hard and fast conditions at this stage in our discussion as to the various details that we have been considering this morning.

I venture to make this intervention at this time, and perhaps I may end it by saying this word of apology. My attendances at the Committee have not been as continuous as I should have wished. I have been called out constantly upon very urgent business connected with the Cabinet. But I can assure my colleagues that I have read, I think, every word that they have said; and, so far as I can, I am following all the arguments that they are urging upon the Committee.

Sir Provash Chunder Mitter : Sir, I will take up the first and second sub-heads first. In coming to a decision as to the numbers in the Lower and Upper Chambers I venture to think we should take the following points into our consideration; namely, facility of providing adequate representation, the expense, and the ability to find men in sufficient numbers who can go from the distant parts of the Indian continent to Delhi or Simla. Then, if we have to find sufficient men of ability and probity, the question of payment of salaries or subsistence allowances and travelling expenses will have to be considered. Then, lastly, there is the very important consideration, namely, that too large a number may render it difficult to transact business quickly and efficiently.

With regard to the first point, Sir, namely, facility of representation, it is patent that, in a vast country like ours, with the varied interests which the Federal Legislature will have to represent, a large number is very attractive. Therefore I find, on the one side, His Highness of Bikaner willing to go to a figure which is larger than that for which some representatives pleaded last year. On the other side, we find Mr. Joshi would go to as high a figure as 600 or 700. Well, that is no doubt a very important factor, namely, facility of representation; but, as I have said, that is not the only factor. If we can give adequate and suitable representation without making the strength of either House too large, I think in the beginning we should try to do so. Our aim should be to come to a decision after taking into consideration these various factors, which, I venture to say, are all relevant.

Then, Sir, the question of expense is a matter which we cannot ignore. The larger the House the more expensive it must be.

Then, ability to find men in sufficient numbers, who are willing to go to Delhi or Simla, is a point which cannot be ignored. I, for one, think there are any number of able men amongst Indians who can adequately fill the position of a Member of either Chamber. *At the same time, we know that our men are generally poor.* At the same time, I know that many of our best men are not inclined to enter the lists for the polls. It may be unsatisfactory, but there are very many good men, not only in my country, but I venture to think in other countries—perhaps in yours—to whom a political life does not appeal. But we want ability; we are starting on a new experiment. We want our best men; and we want our best men to come, not as you want in this country, a comparatively *easy distance to London. You can approach your* Westminster very quickly from any part of your country; but take my friend Diwan Bahadur Ramaswami Mudaliyar—he has to travel for perhaps three or four days in order to arrive at Simla. Look at the difficulties of distance. Therefore that is also a factor which cannot be *ignored, and mere numbers will not help us.* We want numbers undoubtedly, but we want our ablest and best men who are willing to enter the lists by going through the difficulties of an election.

Sir, I mention payment of Members for this reason. I personally am opposed to payment of Members; but there are many men who are able, but who may not find it possible to keep themselves at Delhi and Simla unless you pay them. If you do not pay Members, then you rule out a number of possible candidates. If you do not aim at making the number too high—if you do not have 600 or 700, but if you would aim at something like 300 or *400 in your Lower House—I think it will be easier to get the men* without paying your Members. Therefore, that is a point which we cannot ignore.

After these preliminary observations, I will venture to suggest what, in my opinion, should be the strength of the Lower Chamber and what should be the strength of the Upper Chamber. I think that 150, the figure that was mentioned last year, may not be enough for the Upper Chamber. His Highness of Bikaner suggested 250 *for the Upper Chamber. Mr. Sastri has given very cogent* reasons for suggesting say about 400 for the Upper Chamber. I venture to differ from both of them.

Mr. Jayakar : 350 for the Upper House.

Sir Provash Chunder Mitter : Never mind; I will take it as 350. 350 in my opinion is too much, and even 250 is too much for *the Upper Chamber. I suggest frankly, as a compromise, not more* than 200; and I should prefer 175. But the actual number, in my opinion, should be finally decided by His Majesty's Government after a committee has investigated the matter. His Majesty's Government has got the views of the representatives in this Com*mittee. They can find out—they will find out*—what are the various views of the different representatives. Ultimately, the decision is theirs and must be theirs. The object of a committee

or of a Round Table Conference is to place before them the various view-points; but a committee specially appointed for the purpose of setting important matters as to what the constituencies are going to be, how the number of members is to be allotted to different Provinces, and as between Indian India and British India, will throw further light on this. Therefore, I suggest it should be something between 175 and 200.

Then, with regard to the Lower Chamber, again partly as a matter of compromise between these conflicting standpoints, I say that it should be about 325, but certainly not more than 350. I would prefer 325.

Sir, I will next proceed to the next sub-head, namely:—

> "(iii) On the assumption that all the Indian States accede to the Federation at the start, on what basis is the apportionment of the total number of seats between the States and British India to be made—(*a*) in the Lower Chamber, (*b*) in the Upper Chamber?"

His Highness has asked for 33⅓ per cent. in the Lower Chamber, which is one-third. In reading the Proceedings of last year, I found that some people wanted to allow them seats on a population basis. In a question of this character there are, in my humble opinion, reasons why we should try to defer as much as we can to the views of Their Highnesses, but consistently with the interests of British India. I have heard nothing either upon this side of the table, including Mr. Joshi, or anything on the other side, including His Highness, which savours of the nature of an ultimatum, although both sides sometimes refer to that word. Standing outside that controversy, I do not think that any ultimatum was offered by one side to the other.

H.H. The Maharaja of Bikaner: Not by us.

Sir Provash Chunder Mitter: Nor, if I may say so, by Mr. Joshi. If Mr. Joshi pressed his belief with enthusiasm, then he was merely doing his duty; but I do not think that Mr. Joshi ever said—"Unless we have so much representation there will be no Federation." Therefore, as on both sides we are proceeding on the basis of a give-and-take, there are certain factors which, I think, from the point of view of the good of India, we should take into consideration. Those factors, to my mind, are as follows. Their Highnesses can produce men of administrative experience. It is for the good of India that there should be men with administrative experience in the Federal Legislature. That is a factor which, apart from party considerations, we should not ignore. Then there is the other factor, that representative government is a matter with which we in British India are more familiar than Their Highnesses are. It is true that some of them have started Advisory Councils, but certainly they have not the same experience that we in British India have. Is it strange that they feel some diffidence in entering into a new form of government and a new form of administration?

It would be to the good of India to give some difference to their views, and to give them a little more than the population basis, which *primâ facie* ought to be the correct basis. From the point of view of the good of India we should defer to their wishes and *give them a little more.*

There is another point which *I might mention.* In the past, I do not think that they got the full benefit of some of the items of taxation. Referring to page 172 of the Nind Report I find, *taking, Customs as an item, that the Report gives the States' share* as less than one-eighth of the amount collected in that year. They might have got from the expense of Defence the benefit thereof: but they *did* not get a benefit out of the Customs duty or the Salt duty to the same extent as British India did. Therefore, from that point of view too, we may allow them a little more representation. These figures in the Nind Report show that their subjects, generally speaking, are poorer than the British Indian subjects.

Mr. Joshi : These things are admitted.

Sir Provash Chunder Mitter : I am giving my opinion upon materials and facts. It does not matter, as far as I am concerned, whether they are admitted or denied. What are the subjects that are likely to come up in the future constitution? The levying of Customs duties is an important matter, and it is a matter of all-India concern. If, by the weight of numbers, we do a certain thing *with regard to the constitution, then, even if they get 50 per cent.* in the Upper House and 33⅓ per cent. in the Lower House, they cannot stop it. Therefore my point is that, if they are apprehensive, *their apprehension is not absolutely without reason.* But I began by saying that we must look to the interests of British India as well, and, looking to the interests of British India, I *would appeal to Their Highnesses that in the Lower House they* should not claim anything more than 30 per cent. In the Upper House there is a difference of opinion between 40 per cent. and 50 *per cent.* I *think that the difference is not so great that it* cannot be adjusted by give-and-take. I will not mention the figure.

The next question is:—

"On the assumption that, at the outset, some States decline to enter the Federation—

(*a*) On what principles is the voting strength of the States in each Chamber to be determined from time to time, *until such time as all the States become Units of the* Federation?

(*b*) To what minimum extent must the adherence of Indian States be secured in order to justify the initiation of a Federal Constitution?"

On this head I agree generally with the observations of Mr. Sastri. I say further that, if 50 millions of the representative population of the Indian States agree, I think that we ought to enter into

federation; but even if it be not 50 millions but something less, say 45 millions, I would not object. Here I would again appeal to Their Highnesses that it is not fair that, if a smaller number should join the Federation, they should claim the whole representation. There is also another aspect. If they get the whole representation there will be less incentive for those who stand out to join. On the other hand, if those who stand out find that, by joining, they can get more representation, and they can get their voices heard, then they are likely to join. In any view of the matter, it is not fair that, because a smaller number join, the remaining seats should be allocated to those who have joined. Mr. Sastri has given very adequately other reasons, and I adopt those reasons.

The next question is:—

> "What is to be the apportionment of the British Indian seats between the Provinces *inter se*, and on what principles is it to be based—
>
> (*a*) in the Lower Chamber,
>
> (*b*) in the Upper Chamber?"

I am of opinion that population basis is the soundest basis. It is true that my friend, Mr. Sastri (for whose opinion not only I and every one in this room, but every one throughout the length and breadth of India, has the very highest respect) gave a different opinion. He referred to his experience on the Franchise Committee of which he was such a distinguished member; but when the Montagu-Chelmsford Report was being considered, and the Government of India Act of 1919 was being considered, the position was different, and the problem was different. There was no question of responsible government in the Centre at that time. There was no question even of responsible government in the Provinces at that time. Our present question is not merely responsible government in the Centre but responsible federal government. Now, on subjects affecting a responsible federal government, population plays a large part. How can you allocate how much of the 52 crores realised in the year 1928-1929 as Customs revenue was the contribution of each Province? If you proceed on a population basis you proceed on a sound basis. It may be that there may be differences—it may be that the people of one Province are richer and the people of another Province are poorer; but the aim of the future Federal Parliament will be to equalise the wealth of all the Provinces. From that point of view, the population basis is a sound basis. It may be that one Province may gain and another Province may lose, but you thereby proceed on a principle; and when you are determining the future constitution of a country like India, the less you depart from principles the better for it. Therefore I suggest that it should be on a population basis. But I realise that politics are not wholly logic. It may be that an important Province like Bombay, where the population is comparatively small, may have something to say. Therefore I should

be prepared to come to some compromise in suitable cases; but that will merely be for the transition period, for the intermediate stage. *For example, Bombay's population is 19 millions and the* population of the United Provinces is 45 millions.

Chairman . Bengal 46 millions, United Provinces 45 millions, Madras 42 millions, Bihar and Orissa 34 millions, Punjab 20 *millions, Bombay 19 millions, Central Provinces 13 millions.* Population is not the safe guide always.

Sir Provash Chunder Mitter : Population does play an important part; but in order that there may not be too wide a departure from existing practice, I am quite willing to take into account other factors—for example, the importance of Bombay. Bombay, on the basis of 19 millions, may get less than half what Bengal or the United Provinces get. I am quite willing to give them more; but proceed on the population basis, deviate when necessary for some definite and cogent reason, and on the population basis you are not likely to go wrong. Madras is a very important Province, too. Bengal also is a very important Province. Bihar and Orissa, considering its importance, is not badly placed; but in the division you must give something to those who suffer most on too strict adherence to the population basis, but that only for the transition period. After we have got full self-government, full responsible government on a Federal basis, say twenty years hence or fifteen years hence—I do not know when—or it may be 100 years hence, though I hope not—then let it be wholly on a population basis. Therefore I would strongly urge a population basis.

Mr. Zafrullah Khan · Lord Chancellor, With your permission I shall discuss the sub-heads in the following order: (i), (ii), (v), (iv) and (iii), as I *consider that that is their order having regard* to the difficulties that they present. On the first two heads it is not necessary to say very much. Of course, as Your Lordship *pointed out in the beginning of this agenda, there cannot be much* argument with regard to figures. One has to draw a line somewhere. But the main consideration, of course, must be the efficiency and workable character of these two Chambers. Figures as high as 600 for the Lower Chamber and 400 for the Upper Chamber have been suggested. There are only two considerations which I wish to put forward in support of the lower figures mentioned to-day in connection with both the Chambers. One is that the Upper Chamber, as we visualise it, will be elected by an indirect franchise; and, therefore, with regard to the Upper Chamber, there should be no such serious difficulty, on the score of what Sir Provash Mitter has described as "*facility of representation,*" as there might exist in connection with the Lower Chamber. The figure of 300 mentioned with regard to the Lower Chamber is no doubt the highest of the three figures mentioned in the Report of the Federal Structure sub-Committee; but, having regard mainly to the fact that it will be a directly elected chamber, I consider *that that figure is not too high—and we must always remember* that we have almost unanimously agreed (I believe we have un-

animously agreed) that differences between the two Chambers are to be resolved by Joint Sessions, and we have also agreed that in these Joint Sessions all the Members of both Houses should take part. Well, that means that even taking these two lower figures, 150 for the Upper Chamber and 300 for the Lower Chamber, you will have as many as 450 members sitting in Joint Session, and the questions to be discussed in Joint Session will probably be of greater importance on many occasions than the questions that each Chamber has to discuss separately. You will find it difficult to manage as many as 450 members sitting in Joint Session, and you may find it almost impossible to manage 1,000, which number would be reached if Mr. Joshi's figures were accepted. A good deal has been said on both sides, and, as I have said, one cannot quarrel with ten more this side or ten more the other side; but we must have regard to the question of efficiency. I therefore agree with those of my colleagues who have suggested 150 and 300 as the figures for the Upper and the Lower Chambers.

Now, My Lord, I proceed to submit my observations under Head (v); and I realise that this is a matter which is not very easy of adjustment. On both sides arguments have been advanced as to why the population basis offers a very easy and a reasonable basis, and also as to why and on what considerations it may be necessary to modify it. Some of these considerations are mentioned in paragraph 29 at page 22 of the Report of the Federal Structure sub-Committee. I do not want to go into those considerations at length. Coming from a Province which has not a very large population, but which, from its geographical position, as well as from the military point of view, has a very special importance, I would be very reluctant to accept the basis of population alone as a basis for the distribution of seats between different Provinces. On the other hand, when I look at the other questions and considerations involved under the different sub-heads, in spite of my reluctance on this score and my very keen desire that the quantum of representation allowed to my Province in each Chamber of the Federal Legislature should be commensurate with its importance, I am constrained to consent to a *primâ facie* distribution on the basis of population—subject to this, that this part of my submission is a part of the whole of the submission that I am going to make under this Head; and I shall have to put forward a limitation with regard to this point when I go on to discuss sub-head No. (iii).

Coming to sub-head No. (iv), I have very little to add to what has been said in reference to part (*b*). I think 51 per cent. should certainly be the lowest proportion of the population of the Indian States which could be insisted upon for the starting of a federal constitution—that this percentage must participate in the Federation. Again, it is a matter for discussion; and I should not wish to develop any argument as to whether a higher figure should or should not be insisted upon.

As regards part (*a*) of sub-head (iv) my submission is—and I wish to make it clear—that it would be inequitable, if I may so

put it, on either side, either that the seats which have not been filled on the side of the States should be distributed among the States *who are for the time being represented in the Federation, or* that they should be distributed among the neighbouring Provinces—I realise *that that was not a suggestion put forward; it was only* an illustration given—or that they should be distributed between British India and the States. I would *wish to proceed on a basis* which I am going to submit with regard to sub-head No. (iii); and if any of the States' seats are left unfilled for the reason that the States or groups of States to whom they would have been allotted had they joined the Federation have not yet joined it, I would leave them vacant for the time being, and leave the strength of either Chamber at less than the strength which may be fixed as the normal strength of that Chamber.

My Lord, I now proceed to submit my observations under sub-head No (iii); and here I would beg Your Lordship's indulgence to submit, with very great respect, certain considerations for Their Highnesses to consider under this head while they are considering the quantum of their representation in the Federal Legislature. All of us realise that this is an extremely important matter, and all of us are anxious that, as far as possible, we should be able to meet each other's views. It is in no spirit of arrogance or dictation that I *proceed to make my submission; it is* with the utmost humility and respect towards all my colleagues and more particularly *towards Their Highnesses. My Lord, on this question, in the first* place, along with my colleagues on this side, I wish to assure Their *Highnesses that they are right in insisting upon certain matters* being guaranteed and secured to them. We realise that those are matters which peculiarly concern the States; and with regard to those matters I do not think there is the slightest desire on the part of any one that Their Highnesses should not insist upon those guarantees. It is for Their Highnesses to say what guarantees they want, and those guarantees should be forthcoming. These are questions of sovereignty, succession, dynastic questions, their Treaty rights and their internal autonomy. Once these matters are secured to them as securely as they desire, and in such manner as they desire, I am sure that, on this score, they should have no misgivings whatsoever. With regard to internal autonomy I wish to add only this sentence, that not only do we not desire, but we do not arrogate to ourselves the position that we have anything, if I may so put it, to teach Their Highnesses in the matter of how they should rule their own territories. As a matter of fact, as time goes on, we may have to learn some very profitable lessons from them. But I want them to consider this—that these matters being outside the Federal sphere, the Federal Government will have nothing to do with them. On the other hand, there is one other consideration which I would ask them also to bear in mind when they approach the consideration of this question which is outlined under sub-head (iii). It is this—that they agree to put into the Federation only certain subjects which they regard as being of common interest

and in regard to which they are at this moment willing to give up certain rights. But there is also that category of subjects with regard to British India which is described as "Central" subjects. I am aware that Their Highnesses have expressed their unwillingness to share in the discussions or debates in the Federal Chambers on the "Central" subjects—that is to say, subjects which are common to British India alone. But I want to point out that, in the nature of things, when we are going to have one Federal Legislature and no separate "Central" Legislature for British India, and when we are going to have only one Federal Executive, the position in practice will be that, at least so far as the Executive is concerned, Their Highnesses will be sharing in the administration of subjects which are purely British Indian subjects. That is a consideration which I hope Their Highnesses will bear in mind with regard to what I am about to submit.

Coming to the question of what has briefly been described as weightage, with regard to the representation of Their Highnesses in these Chambers, I must repeat one more consideration. That is that the Federal Structure sub-Committee has made a recommendation—it has expressed its view that the federating Units will be the Indian States or groups of States on one side and British Provinces on the other. Therefore, as I submitted in my very first speech in this Committee, there will be no question of preponderance of any Unit in this Federation. But let us go further than this theory, and let us look at actualities for a moment. I realise that, if British India were coming into the Federation as one Unit—if British India as one entity had common interests which might under some possible circumstances come into clash with the common interests of the States among themselves—if British India had one separate culture and the States another—if British India were inhabited by one race and the States by another race—if the people of British India were the adherents of one faith and the people of the Indian States of another faith—if there were any such cleavage or division between British India as a whole on the one side and the Indian States as a whole on the other—these would have been the strongest reasons for Their Highnesses insisting that, being the smaller partner in the Federation, they should be given a certain amount of weightage; and that would have been met generously on the side of British India. But, happily, there is no such difference. As Their Highnesses have themselves said, very often the division of interests and the question of voting will be decided on the ground of regional distribution rather than on the question of the yellow or the red colour on the map. As one can see, when these Federal questions are being discussed, that is bound to be the case. To take only one instance—supposing the question of Customs was being discussed, it is possible that the Maritime States, both British and Indian, might take one view, and the States in the interior of the country, both British and Indian, might take another view. It will be no question, I conceive, of Indian States versus British India, as Customs is going to

be one of the sources of Federal revenue. There will not be that difference to which Sir Provash Chunder Mitter has alluded.

That being so, my submission is that, having regard to the fact that matters that are of supreme importance to the States and are peculiar to them, are being excluded from the Federation—the Federation relating only to certain matters of common interest between Indian India and British India, and also including the *policy, legislation and administration of certain subjects that are* entirely British Indian subjects—I would beg Their Highnesses to reconsider this question of weightage. In such an Assembly, questions might arise relating to British India alone; British India might have an apprehension that a common executive dealing with these questions would not deal with them sympathetically in the interests of British India alone. But Their Highnesses can have no apprehension that, with regard to matters that are put into the Federation, there will be any such division as the States on one side and British India on the other. My submission is that, on the ground on which presumably the Indian States claim a higher *representation than their population basis, it is possible for each* British Province also to claim weightage. The Punjab, as I have said, might come forward on the ground of its martial importance, Assam might claim it on the ground of her backwardness; Bombay might claim it on account of its supreme commercial interests; Bengal might claim it on account of the political lead that it has given to the country, on account of its commerce, on account of intellectual superiority; and so on; and weightage could not be allowed to all. My submission, therefore, is that Their Highnesses should be content to be represented in the Legislative Chambers on the population basis, not because there is any desire on this side *to minimise the importance of the States, nor that there is any* desire on this side to get a greater share, as it were, of the spoils in any sense, but because, having regard to the character of the Federal Legislature and the subjects with which it will have to deal, Their Highnesses should have no apprehension that that representation does not give them an adequate representation. Therefore, upon this basis, both in the Upper Chamber and in the Lower Chamber I would submit that Their Highnesses should accept that position. I would repeat the appeal made to them by Mr. Sastri that, *whereas there is every desire on this side—and* proof has been given of that desire—to take into consideration the difficulties of Their Highnesses, Their Highnesses should take into consideration the difficulties under which British India labours and may have to labour with regard to the decision of these matters, and make it easy for British India to come into the Federation as it is the desire of British India to make it easy for Their Highnesses to come into the Federation. If, however, (and this is that limitation which I said I would wish to stress with regard to sub-head (v) *after I had dealt with sub-head (iii) under any combination* of circumstances, it is subsequently found that the States must be given representation in the Federal Chambers higher than that justi-

fied by their population, then my consent to the distribution of the British Indian share among the Provinces upon the basis of population, reluctant as it is, would disappear; and I would wish the British Indian share to be distributed among the Provinces, primarily on the basis of population, but supplemented by other considerations which are peculiar to each Province.

Naturally, the question of how the quantum of the seats allotted to the States should be distributed *inter se* among the States, is a matter entirely for the States to decide; and, with regard to that, British India would have nothing to say.

These are the considerations on the basis of which I have made my submissions, and on the basis of which the suggestion was put forward this morning that the distribution of seats between British India and the States should be in proportion to population.

Sardar Ujjal Singh : I shall be as brief as possible. With regard to the strength of the Lower Chamber, the general opinion on this side of the Committee on the last occasion was that it should be 300. We were led to this conclusion by the consideration that the House should not be too big for the proper transaction of business, and that it should not be so small that different interests could not be adequately represented. The view also prevailed that at least one Member should represent a million of population. According to that basis too we ought to have at least 350 Members, because the population has gone up from 303 millions to 335 millions. But there are other considerations which, to my mind, have a bearing. I realise the difficulties with which the States are faced, and also that a higher figure would facilitate direct election, and would make direct contact of the Members with their constituencies more possible. If we increase the number of the Lower Chamber to 400, I believe that it will find satisfaction both in the States and in British India. This number is not too high at all. The Simon Commission, after carefully going into the difficulties of election, suggested that the strength of the Lower House should be 300 to 400; and their conclusions were based, not upon a Federal Legislature in which the States would be represented, but for British India alone. Now, what I am suggesting is that we should have 400 Members both for British India and the States. If you compare this number with that in any other federation, not of the same size, but even of a smaller size, you will find that it is not too big. Canada, with a population of 8 millions, has a strength of 245 in the Lower House. If you come to the modern constitutions, Ireland has one Member for 30,000 population. In Czechoslovakia, a small country, there are 300 Members in the Lower House.

Coming to the second point, I would like to have 200 Members for the Upper House. Last time we generally agreed upon the number of 150. The consideration that is weighing in my mind is that at the last Session, we roughly fixed the strength of the Upper House at one half of the Lower House. If we are going to have 400 Members for the Lower House, we should not have less than

200 Members for the Upper House. This proportion prevails in many other countries. In Australia the strength of the Upper House is half that of the Lower House. In Canada the strength of the Upper House is less than half that of the Lower House. In Czechoslovakia the strength of the Upper House is exactly half that of the Lower House At the same time, if we have 200 Members for the Upper House, it will help to solve the difficulties of the States.

Coming to the third point, I am of opinion that, in the Lower House at any rate, the States should not have any great weightage. Their proportion on a basis of population is 23·8 per cent., and at the utmost they should have 25 per cent. representation. According to that, they will have 100 Members in the Lower House out of 400. It ought to be remembered that there is going to be a certain number of official Members, not exceeding ten. Those Members will have to be provided for, and they will be provided for from the quota of the British India Members.

Turning to the Upper House, I realise that the population basis, as one of my friends remarked, is not always a fair guide. The importance of the States must be taken into consideration; and their sacrifice in joining the Federation should certainly be taken into consideration. At any rate, on the part of any member who claims a weightage for his own community, it would not be just to deny a weightage to the States. Last time some of us were prepared to go as far as 40 per cent. representation to be given to the States. That was the utmost that some of us agreed to. My friend, Mr. Sastri, agreed to one-third representation. For myself, I shall be willing to give them 35 per cent., which represents an average of their area and population, but if that is not sufficient to accommodate certain States and to make feasible and possible for some other States to join the Federation, I would be prepared to go as far as 40 per cent., but no further. By that the States will be getting 80 seats out of 200; and here, too, it should be remembered that official members have to be provided for, and they will have to be provided from the quota of the British Indian Members

With regard to the fourth point, I would suggest that the vacant seats of the States, which may not consider it possible to join the Federation for some time, should be left unfilled, and as they go on joining the Federation the seats will be automatically occupied.

As regards point (b), in my opinion, at any rate, if 50 per cent. of the sovereign States which in their own right are members of the Chamber of Princes, representing 50 per cent. of the population, joined the Federation, then it would be possible to start with the scheme

On point (v) I am not in favour of the seats being distributed among the Provinces on a population basis. I speak for my own Province, and my friend, Mr. Zafrullah Khan, has already spoken about the importance of the Punjab. On account of its geographical position, and on account of the contribution it makes to the

Indian Army, it does require a little weightage. And there is another reason. The minority interests cannot be adequately represented if the Punjab is given representation on a population basis. The Sikhs will certainly demand weightage. How are they going to get weightage in the Central Legislature if you are going to distribute seats to the Punjab on a population basis alone? At present the Punjab is given 12 per cent. representation both in the Assembly and in the Council of State. I would not go further than that; but I would certainly press that the existing representation ought to be maintained.

Mr. Joshi : You propose that there should be one Member for one million of population. That, according to the present population, means 250. Then we have to add certain weightage in the Upper and Lower Chamber. The weightage asked for by the Princes is about 10 per cent. That may require about 40 Members. Then the weightage claimed by the Muslims may require about 40 new seats. Then the special representation claimed by Europeans, Landlords and Labour, Industry and Commerce, would be about 35 or 40. Then the special representation of the Depressed Classes has to be considered, and 10 official Members. That will make the number more than 400.

Sardar Ujjal Singh : No. 400 I said; and you will give the States 100, *i.e.*, 25 per cent. That is roughly the population basis.

Mr. Joshi : I take the whole of India on the population basis—350.

Sardar Ujjal Singh : You will realise that there is not much difference between your contention and mine.

Mr. Joshi : I am thinking in mathematical terms.

Sardar Ujjal Singh : Not much difference. Out of 400, you will have 25 per cent. for the States, which is near about the population basis. Twenty-four per cent. is their population.

H.H. The Chief of Sangli : My Lord Chancellor, His Highness The Maharaja of Bikaner has already set forth with his usual ability, in his speech of yesterday, the view-point of the Indian States Delegation regarding the strength of the Federal Houses and the proportion of the representatives of the Indian States to those of British India in those Houses. I should like to lend my strong support to the view that the States should be represented as fully as possible, especially in the Upper House, not only in proportion to the representation from the British Indian Provinces, but also in actual numbers. My reasons, briefly, are that all the States being constituent Units in the new Federation, it is desirable both that as many as possible should be individually represented and that those which cannot be granted individual representation should at least have enough grouped representation to permit of their particular interests being voiced and, as far as may be, conserved. I trust that I shall not be accused of striking a discordant note if I venture to express a doubt whether the numbers which have been proposed for the two Houses will prove adequate

if the legitimate claims and aspirations of the States have to be duly met. The minimum number which I consider necessary for their requirements is 150, so far as the Upper House is concerned. If the representation of the States in this House is reduced to 125, or any similar number, it is obvious that fewer States will be represented individually, and that the representation of the comparatively small States must be small in amount and inconvenient in distribution. I am, of course, aware that in any case a considerable degree of grouping is inevitable. But the smaller the number of seats allotted, the larger will be the geographical extent of the groupings. A wide geographical area involves not merely physical inconveniences, but the junction in one electoral area of peoples of differing affinities and interests.

The arguments which have been advanced in favour of a small Upper House are: (1), that it would be of a manageable size; (2), that it would be less expensive; and (3), that it will consist of representatives of experience, weight and character. I acknowledge the force of these arguments; but I cannot help feeling that these advantages will be dearly bought if they reduce the representation of what are, after all, federating Units, though small individually, to a nominal figure. Indeed, the smaller States may have occasionally special points of view to urge in regard to Federal questions, which may even justify some weightage being given to their representatives.

While, however, I am urging the requirements of the States as a whole before this Committee, I do not wish it to be understood for a moment that I am opposing the demand for an Upper House of 250 Members. But I would strongly appeal to our British Indian friends here, no less than to the members of the States Delegation, who have shown such a generous spirit of accommodation, to give their liberal consideration to the requirements and aspirations of the comparatively small States. Any increase in the numbers of the Upper House which will permit of a more complete representation of the States will be very welcome to them. Without entering into details of distribution, which I think should be a matter for consideration, in the first place, by the States themselves, I do not know how their full representation may be possible within the limit of 125.

First of all, there are 109 States, the Rulers of which are members of the Chamber of Princes in their own right. Then there are the 126 States, the Rulers of which are represented in the Chamber by 12 members of their Order, elected by themselves. It is well known that many of these States have consistently protested against their exclusion from membership of the Chamber in their own right. The justice of the protest has been recognised by the decision of the Government of India to give one of them, namely Mayurbhanj, the right of membership. It is also known that the Political Department is re-examining the whole question and considering the right to similar membership of the other States

which are now excluded from permanent membership; and it is likely that some of them may be promoted, on investigation, from what is known as the second class to what is known as the first. Then there is the large number of the third-class States; they are 327. Many of these are inconsiderable in individual size; but their aggregate size and influence is considerable. They are bound to the British Empire by agreement which can as little be regarded as "scraps of paper" as the Treaties of their greater brethren. Above all, it is essential that this Federation of India should be universal, and that no discontented—I may almost say outcast—residue should be left without voice and without representation. It is in view of all these considerations that I venture to think that 150 should be the number allotted to the States in the Upper House.

As regards the Lower House, I see that the numbers must be based more largely upon population. I recognise, therefore, that there must be considerable groupings of the comparatively smaller States, if the figures of population are to be the main factor on which representation is to be based. Here again, however, it is essential that the electoral areas should be of manageable size if there is to be any real representation of the generally widely-scattered States. I fully support the desire of my colleagues on the States Delegation that a percentage of 33⅓ of the seats should be given to these States. A House of 350 would, however, only allow of 117 Members being sent from States. For the reasons I have already given, I believe this would yield an insufficient representation. I would therefore prefer a Lower House of 450, with 150 representatives from the States, if the Upper House also has a strength permitting of 150 States' representatives. In any case the States should have, in the Lower House, a representation proportionate to their representation in the Upper House.

It has been stated by some of my colleagues that, if a few large States, representing 51 per cent. of the total population of the Indian States, were to join the Federation, the new constitution might start working. It has further been said that, pending the entry of the other States, those that have already joined the Federation would exercise the aggregate voting strength allotted to the States as a whole. While I generally agree with the idea underlying the suggestion, I venture to hope that, whatever constitution is evolved out of our deliberations, it will be as much attractive to the smaller States as to the larger. From this point of view it is necessary to see that the scheme of representation does not in any way operate unjustly in regard to the smaller units of Indian India.

My Lord, constitutions are made but once. Once they are made, the universal tendency in these rigid constitutions is to maintain, and not extend, whatever recognition may have been accorded by them to the Units covered by their provisions. That is why the States are anxious; and I venture to urge that their requirements and aspirations should receive due consideration at

this stage. His Highness The Maharaja of Bikaner has from the outset championed the cause of the smaller States. His Highness fought their battles successfully at the establishment of the Chamber of Princes. Evidence is not wanted, even during the short time that His Highness The Nawab Sahib of Bhopal has been working as Chancellor of the Chamber, that His Highness is anxious to *uphold the interests of the States and secure justice to the smaller* States. I hope the other distinguished members of the States Delegation will do what they can to further the well-being and advance *the interests of all classes of States. The British Indian statesmen* who are here are endeavouring to hammer out a constitution which will embrace in the new India every element that exists in the present-day India I therefore appeal to my colleagues from British India and the Indian States to vouchsafe their earnest and sympathetic consideration to the point of view I have just placed before them on behalf of the States, which have their own traditions and importance, and whose Rulers and peoples are as anxious as the citizens of any other part of India to participate in the fortunes of their native land.

Mr. Gavin Jones: Lord Chancellor, I will not speak on questions (i), (ii) and (iii), because I do not want to enter into the battle of the percentages. Percentage is limited by 100, as the word implies; and I do not think that even this Committee can make 2 and 2 make 8. I think, Sir, that this question will have to be left to an independent tribunal.

With regard to question (iv), I just want to say one word. In the event of the Indian States' quota in either House not being filled, I submit, Sir, that the Crown has obligations for the whole of India as Paramount Power. We have heard a good deal about give-and-take; but it is quite evident that in this Federation nearly all the giving has got to be done by the Crown, both in its *power* over British India and in its paramountcy over the States I therefore think that the Crown should fill the vacancies by nomination, *to represent the Crown until such times as those States who* have not joined the Federation agree to concede the necessary powers to the Crown to be placed at the disposal of the Federal *Government.*

As regards question (v), I am opposed to the idea of distribution *by population. It is not satisfactory in federations of this kind,* because they are representative of States and not of peoples. I therefore suggest that the eight major States should send an equal *number of representatives to the five or six minor ones. The* numbers will depend upon the numbers that are elected to the Legislature. When the United States of America was federated, it was only by giving an equal number of votes to all the States that they were able to bring about federation. This was at first strongly opposed by the major States, but they had to give way to the minor States. I therefore submit that, in all history, a population basis has never been found satisfactory for a federation. I

submit that we should take other matters into consideration. That is all that I have to say.

Dr. Ambedkar: I do not propose to say anything on sub-heads (i), (ii), (iii) and (v). I agree with what my friend, Mr. Joshi, said this morning upon all those points except in one respect. I am not wedded to any particular figure regarding the composition of the two Chambers. In my opinion, a given figure ought not to be our starting point. The figure ought to be the resultant of all relevant considerations. I may also say here that my sympathies are in favour of a larger Chamber, because I think that a Chamber, being a deliberative body, ought to be constituted in such a manner that all interests can find their place in it, without any particular interest having to be cramped into it.

There is one argument that has been brought forward against a large Chamber, namely that our Chambers must be business-like. I think there is some force in that argument, but I do not quite understand how the strength of the Chamber has anything to do with its business character. I should have thought that the business character and despatch of a Chamber depended less upon the numbers of which it was composed, and more upon the Standing Orders and the rules of business that it had framed for itself. Consequently, I would not limit it by that consideration.

The point with regard to which I propose to speak in particular is sub-head (iv). Taking part (*b*) of sub-head (iv) first, it reads thus:—

> "To what minimum extent must the adherence of Indian States be secured in order to justify the initiation of a Federal Constitution?"

It seems to me, with all respect, that that is a question which ought to be addressed to His Majesty's Government. It is they who ought to tell us what number was, in their opinion, necessary before the Federation could be initiated.

There is one question, the veil from which has not as yet been lifted. We are all told that the Indian Constitution of the future must be a Federal Constitution; but no one has yet made it clear whether it is the view of those who assert that proposition that the entry of the Indian States is a condition precedent for the establishment of a responsible government in a federal form. It is a subject on which it is difficult for me to speak unless I know definitely what is the view of those who take their stand upon that proposition. If you wish me to answer that question, then I will do so for myself; and my answer is that we need not wait for the adherence of any prescribed number of States for the initiation of the Federal Constitution. I do not know that there would be any British Indian who would like to put the establishment of responsible government in cold storage until the Princes make up their minds to enter into the Federal Government of India. I therefore think

that *all that we need do for the initiation of the* Federal Government of India is to put a clause in the Constitution to permit His Majesty, by Order in Council, to admit new States as they desire to *come into* the Federation. This is *not* something which is new. Such an arrangement finds a place in the Canadian Constitution, Sections 146 and 147, and in the Australian Constitution, Sections 121 *to* 124. The Canadian Constitution, Section 146, *provided* that, in the case of other units, which were not included in the Federation at the time when it was formed, in 1867, and which *thereafter showed their willingness to enter into it,* His Majesty could, by Order in Council, admit them as units of the Constitution. I think that it would be sufficient for our purposes to initiate the *Federal Constitution with a clause of this sort.* This would be consistent with the freedom of the Princes to enter or not to enter the Federation.

Coming to (*a*) of sub-head (v), we have had the suggestion from His Highness The Maharaja of Bikaner that the States joining the *Federation, whether one or all or a few, should be entitled to* exercise the whole of the voting strength that is assigned to them. In all humility, I submit that that is a proposition which to my mind *is an astounding proposition.* It *is a proposition, if I may say so* with due respect, without rhyme or reason. No justification has been made out for what I may call an extraordinary proposition of *this character. What does it mean ultimately?* It *means this*—that a single Prince coming into the Federation and taking part in legislation affecting the destinies of subjects of British India, will be able to throw in, in his voting capacity, the whole of the power of the Native States, without the British Indians participating in the Legislature having any right to do anything to affect the destinies of the subjects of those Princes who do not choose to come into the Federation. It is a terribly one-sided arrangement. A Prince who chooses to keep outside the Legislature will, under this provision, be able to acquire and transfer his vote to a neighbouring Prince or his colleague and give him the power to affect the destinies of British India. That, I submit, is something which is without justice and without equity in it, and it is something to which I, for myself can never consent. The only right thing and the only proper *thing would be that the voting strength* of such Princes as would be willing to come into the Federation should be confined to the particular quota of votes that will be assigned to them under *the arrangements proposed by* Sir Mirza Ismail. *If a single Prince* comes in, and if he has one representative, he will be entitled to one vote. If groups of Princes come in, and under the system proposed by Sir Mirza Ismail the group has got two votes assigned to it, the group will have to come as a group and will not have the power to exercise more than its two votes. The other arrangement would be one to which I, at least, would be unable to give my consent.

(The Committee adjourned at 4-25 p.m.)

PROCEEDINGS OF THE TWENTY-NINTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON THE 24TH SEPTEMBER, 1931, AT 11 A.M.

HEAD 1.

Strength and Compositions of the Federal Legislature—(concluded).

H.H. The Maharaja of Bikaner: My Lord Chancellor, I am extremely reluctant to inflict myself on the Committee again, and I am indeed grateful to you for giving me this opportunity of speaking about some important points that bear on the questions which we have had under discussion during the last two days. I have already explained that my business, in the second part of my speech on Tuesday, was to place before you, as faithfully as I could, the unanimous, or the majority, view of the Indian States Delegation And before proceeding further, I should like to express my gratitude to the various speakers, and especially to my friend, Mr. Sastri, for their spirit of friendliness and understanding as regards the standpoint of the States, even though it was inevitable that, on some points, unanimity was not possible to be attained—at least at the present moment.

Before dealing with what, amongst the States' problems, is one of the most important—namely, the question of the smaller States and their adequate representation—I must refer first to certain views propounded yesterday, especially the suggestion that a strong and impartial committee be appointed by His Majesty's Government to hear evidence and to allocate seats in the Federal Legislature amongst the States *inter se*, as also some remarks as to grouping, and the minimum or maximum number—as one looks at the question—which by some speakers was deemed sufficient for the States. Sir Mirza Ismail said that any settlement amongst the States was unlikely. I regret I am compelled to challenge Sir Mirza's statement. To quote his own words in the official proceedings, he said:—

> "The fact that I do not agree with him here"—(he was referring to His Highness the Chancellor of the Chamber of Princes, our other leader here, His Highness of Bhopal)—"seems to be sufficient justification for the appointment of a special independent committee to decide this question."

If the *obiter dictum* of this statement is to be translated into literal action on every point when a British Indian or States Delegate disagrees, I do not know where the States and British India will ultimately find themselves. We cannot and should not, I submit attempt to force our views on others.

Now, Sir, I am the first to admit that every Delegate on this Committee or the Round Table Conference, including the members of our States Delegation, has, of course, the right to express freely his individual opinion; but, as different opinions have been express-

ed by a few members of our Delegation, it is with extreme reluctance that I claim, in my turn, the right to express my clearly contrary views. I wish to make it clear that such individual expression of views by Sir Akbar Hydari and Sir Mirza Ismail should not be taken to imply that they represent by any means the views of the States Delegation as a whole, and certainly not of either the majority of us present here or of the vast majority of the Indian States, for which I claim, on more grounds than one, to speak with considerable inside knowledge and authority. Indeed, I can see nothing more likely to cause at this stage a serious split amongst the States or to wreck federation, as far as the States are concerned. I must once again say with what regret I have to criticise some of these observations, all the more so as they come from Ministers of the most important of the important States in India, and furthermore from old friends like Sir Akbar and Sir Mirza. But I would beg them to realise that, beyond honest and strong differences of opinion, nothing personal is intended, and that, if I appear to speak in a blunt manner, it is the fault of my outlook and actions, being those of a plain soldier who does not beat about the bush or use any long-winded, meaningless words where he differs.

As I have already stated, this is a case of history repeating itself; and I think it is generally known that grave alarm and concern have, in the circumstances, not unnaturally been created amongst the States, as was the case when individual membership of the Chamber of Princes was similarly under consideration.

Sir Mirza Ismail: My Lord Chancellor, I wonder whether there is any necessity for such a long statement challenging our representative capacity.

H.H. The Maharaja of Bikaner. I did not challenge their representative capacity, My Lord

Sir Mirza Ismail: All I stated was—and Sir Akbar Hydari also expressed his agreement with me—that this was a question of immense difficulty and complexity, and instead of attempting to solve it amongst ourselves—because I thought and still think more firmly than ever, after what has been uttered yesterday and to-day, that it is impossible for us to settle it amongst ourselves—the best plan and the most obvious plan was to refer it to an independent committee on which there should be no representative of any State in India. Is not that a more satisfactory method of solving this intricate problem than trying to solve it amongst ourselves? I feel that the very attempt to solve it would engender so much heat and so much jealousy that it would do far more harm than good; and in the view that I expressed I was supported not only by Sir Akbar Hydari but also, I believe, by His Highness The Gaekwar of Baroda. So there are Baroda, Hyderabad, Mysore, Jodhpur and Jaipur who are all in favour of this view, and it may be that some of the smaller States also may hold this view.

H.H. The Maharaja of Bikaner: And others may be against it.

Sir Mirza Ismail: That is all I said, and nothing more.

H.H. The Maharaja of Bikaner: It is because we hold different views on these very important matters that I want to place them before you.

Sir Mirza Ismail: My friends on the other side, some of the most eminent leaders in British India, have also said that this was the most satisfactory way of dealing with it.

H.H. The Maharaja of Bikaner: We did not interrupt certain members of our Delegation when they put forward their views, and I hope that those who hold contrary views will be allowed to have their say.

I was saying, as I had already stated previously, that it was a case of history repeating itself, and that grave alarm and concern were already felt as regards the position created amongst the States, as in the case where individual membership of the Chamber of Princes was under consideration. I had intended to deal with this point also in my speech the day before yesterday; but I refrained from doing so on various grounds, and also in view of the fact that, I having been brought up as a soldier in the strict school of discipline, I felt that, in the second stage of the proceedings, my business was merely to voice the views generally of the States Delegation. But we should be laying ourselves open to justifiable attacks from Princes and States—and especially those in India—whom we have the honour to represent here, if we did not say anything on the subject. May I here read to you the full text of the resolution, to which His Highness the Chancellor referred, approved unanimously at the Bombay meeting in July last of our States Delegation, embodying the proposals of a Committee of Ministers, on which Sir Akbar Hydari also served, and, in the unavoidable absence of Sir Mirza Ismail, we also had the benefit of having there Diwan Bahadur Krishna Rao, a member of the Mysore Government.

Sir Mirza Ismail: Sir Akbar Hydari?

H.H. The Maharaja of Bikaner: Sir Akbar Hydari was on the Committee. This was the proposal accepted by him on the Delegation, and Sir Mirza Ismail had a representative there—I believe the senior member of the Mysore Executive Council. This resolution runs as follows:—

> "The distribution *inter se* of seats amongst the States in the two Houses should be left to be settled by the States. Failing agreement the points in dispute should be referred to an expert committee to be appointed by the Crown."

The Indian States Delegation adopted in its entirety the Ministers' Report which dealt with this and other points, with the single modification, suggested by Sir Akbar Hydari himself, that the strength of the Upper and Lower Houses should not exceed 250 and 350 respectively. This I believe still to be the view of the majority of our Delegation. Here I must observe, first, that the question how seats are to be distributed amongst the States—as

H.H. The Maharaja of Bikaner: It is because we hold different views on these very important matters that I want to place them before you.

Sir Mirza Ismail: My friends on the other side, some of the most eminent leaders in British India, have also said that this was the most satisfactory way of dealing with it.

H.H. The Maharaja of Bikaner: We did not interrupt certain members of our Delegation when they put forward their views, and I hope that those who hold contrary views will be allowed to have their say.

I was saying, as I had already stated previously, that it was a case of history repeating itself, and that grave alarm and concern were already felt as regards the position created amongst the States, as in the case where individual membership of the Chamber of Princes was under consideration. I had intended to deal with this point also in my speech the day before yesterday; but I refrained from doing so on various grounds, and also in view of the fact that, I having been brought up as a soldier in the strict school of discipline, I felt that, in the second stage of the proceedings, my business was merely to voice the views generally of the States Delegation. But we should be laying ourselves open to justifiable attacks from Princes and States—and especially those in India—whom we have the honour to represent here, if we did not say anything on the subject. May I here read to you the full text of the resolution, to which His Highness the Chancellor referred, approved unanimously at the Bombay meeting in July last of our States Delegation, embodying the proposals of a Committee of Ministers, on which Sir Akbar Hydari also served, and, in the unavoidable absence of Sir Mirza Ismail, we also had the benefit of having there Diwan Bahadur Krishna Rao, a member of the Mysore Government.

Sir Mirza Ismail: Sir Akbar Hydari?

H.H. The Maharaja of Bikaner: Sir Akbar Hydari was on the Committee. This was the proposal accepted by him on the Delegation, and Sir Mirza Ismail had a representative there—I believe the senior member of the Mysore Executive Council. This resolution runs as follows:—

> "The distribution *inter se* of seats amongst the States in the two Houses should be left to be settled by the States. Failing agreement the points in dispute should be referred to an expert committee to be appointed by the Crown."

The Indian States Delegation adopted in its entirety the Ministers' Report which dealt with this and other points, with the single modification, suggested by Sir Akbar Hydari himself, that the strength of the Upper and Lower Houses should not exceed 250 and 350 respectively. This I believe still to be the view of the majority of our Delegation. Here I must observe, first, that the question how seats are to be distributed amongst the States—as

shall find ourselves in the midst of the most frightful complications and anomalies. For instance:—(1) Udaipur, on the basis of its population, would receive only half the number of seats of Jaipur—a position of inferiority which it would be impossible to conceive that Udaipur would ever accept; (2) Mayurbhanj, the latest member in its own right of the 109 members of the Chamber of Princes—*whose relative importance and sovereign rights I am the first to admit, and whom we were glad to welcome in our midst*—would have come 17th in the list of all the 109 members of the Chamber of Princes; (3) In the last 6 of the first 28 States, according to population, there are 4 States—I say nothing to detract from their relative importance or the sovereign powers they possess—which, on a population basis, though not among the first 109, would come, as I have said, among the first 28. (4) *Then Kathiawar—which, with Central India, possesses the largest number of various units of Indian India*—has in addition 185 non-salute States, including non-jurisdictional talukas. There are 15 other salute States. Of these the most senior—Junagadh—would come 23rd in order of population, after some who have just joined as members of the Chamber of Princes; and so on. But these three States—that is to say Junagadh, which I believe is the premier State in Kathiawar; Nawanagar, which I believe is the second; and Bhavnagar, which *I believe ranks third—would come 23rd, 32nd and 27th respectively*, although these three States either exceed or approximate a crore of rupees in revenue; and all these three States enjoy dynastic salutes of thirteen guns.

I shall now deal briefly with the question of salutes, which has *a bearing on this. There are admitted anomalies in this, even though salutes serve as a somewhat useful guide in certain directions.* In this connection I have been repeatedly and expressly asked by a large number of States to make it clear on all occasions, that salutes alone should not, and cannot, be taken as one of the essential tests qualifying for individual entry into the Federal Legislature. May I here quote two brief extracts from an official *speech made by a former Viceroy, Lord Chelmsford?* Speaking on *the identical question of qualifying tests for membership of the* Chamber of Princes—then about to be inaugurated, and when the constitution of that body was under consideration—Lord Chelmsford stated on the 20th January, 1919, in the Princes' Conference which was held previous to the establishment of the Chamber of Princes, that Mr. Montagu, the then Secretary of State for India, and he *were of the opinion that*—I quote his own words:—

> "the whole question of salutes needed most careful investigation in view of the anomalies which appeared to exist; and we held, therefore that it would be unwise to base upon the salute list, as it stands, any fundamental distinctions between the more important States and the remainder. It appeared to us that, if such a distinction is made, it must be based upon constitutional considerations; that is to say, upon

will settle some things. Other points of course will have to be adjudicated upon by arbitration. Of course, that will be final. If there are certain points of difference which can go to arbitration, the decision will have to be accepted; but it does not mean, therefore, that States will have to come into the Federation against their wishes. I cannot, therefore, see what any of the large or important States have to fear from such preliminary attempts to arrive at unanimity, or at least the greatest achievable measure of unanimity, or why they should attempt to deny to the various States the fullest and freest opportunities of at least first discussing the question amongst themselves and putting forward their views and proposals. I wish to say, Sir, that I have not the least doubt that several even among the important States, after reviewing our work, and hearing the discussions and final recommendations of the Round Table Conference, will themselves want to proceed on a method something like that which I have outlined.

My Lord Chancellor, I wish to make an observation with reference to what has just fallen from Sir Mirza. I trust that no one here, or in India, will take it as implying the least unfriendliness to any Prince or State; but, even amongst the individuals and States, of equal rank, *inter se* there is necessarily relative seniority and juniority. The important—or, as I prefer to call them, the larger—States, and the smaller States, can be distinguished by various tests, such as population, area, revenue and other important factors. Hyderabad indisputably stands first amongst the 109 members of the Chamber of Princes, in the same way that the 109th member ranks after the remaining 108. But, through a combination of circumstances, an impression has been encouraged among some States, which I am sure it will be the wish of the biggest of our big States also to remove. That is that there are only some three, or six, or a dozen, or fifteen—I deliberately abstain from giving any specific number—which are the only States that count, and that no other important States exist. Here, My Lord Chancellor, may I repeat that there are various tests—not merely population, area and revenue, but other generally recognised tests in judging the importance of the States by which the Viceroy and the British Government have been guided when there have, for instance, been disputes—as I think Lord Reading will admit—of precedence between States *inter se*. These tests are, for instance, Treaties, measure of sovereignty, past traditions, independence, history, political importance and influence, and such other well-known tests. It was on such grounds that I felt compelled to put a question to Sir Mirza when he claimed, if I understood him rightly, for the great States of Jaipur and Jodhpur—whose advisers are associated with him here—the still prouder position amongst the many big and important Treaty States of Rajputana of being the biggest. It was, therefore, that I asked whether Udaipur was not the biggest.

Whilst I am on this subject, I may say that, if we proceed on the mere test of population in regard to the relative importance of the States, or as to *their* entry into the Federal Legislature, we

shall find ourselves in the midst of the most frightful complications and anomalies. For instance:—(1) Udaipur, on the basis of its population, would receive only half the number of seats of Jaipur—a position of inferiority which it would be impossible to conceive that Udaipur would ever accept; (2) Mayurbhanj, the latest member *in its own right of the 109 members of the Chamber of Princes*—whose relative importance and sovereign rights I am the first to admit, and whom we were glad to welcome in our midst—would have come 17th in the list of all the 109 members of the Chamber of Princes; (3) *In the last 6 of the first 28 States, according to* population, there are 4 States—I say nothing to detract from their *relative importance or the sovereign powers they possess*—which, on a population basis, though not among the first 109, would come, as I have said, among the first 28. (4) Then Kathiawar—which, with Central India, possesses the largest number of various units of Indian India—has in addition 185 non-salute States, including non-jurisdictional talukas There are 15 other salute States. Of these the most senior—Junagadh—would come 23rd in order of population, after some who have just joined as members of the Chamber of Princes; and so on. But these three States—that is to *say Junagadh, which I believe is the premier State in Kathiawar;* Nawanagar, which I believe is the second; and Bhavnagar, which *I believe ranks third*—would *come* 23rd, 32nd and 27th respectively, although these three States either exceed or approximate a crore of rupees in revenue; and all these three States enjoy dynastic salutes of thirteen guns.

I shall now deal briefly with the question of salutes, which has a bearing on this. There are admitted anomalies in this, even *though salutes serve as a somewhat useful guide in certain directions.* In this connection I have been repeatedly and expressly asked by a large number of States to make it clear on all occasions, that salutes alone should not, and cannot, be taken as one of the essential tests qualifying for individual entry into the Federal Legislature. May I here quote two brief extracts from an official speech made by a former Viceroy, Lord Chelmsford? Speaking on the identical question of qualifying tests for membership of the Chamber of Princes—then about to be inaugurated, and when the *constitution of that body was under consideration—Lord Chelmsford* stated on the 20th January, 1919, in the Princes' Conference which was held previous to the establishment of the Chamber of Princes, that Mr. Montagu, the then Secretary of State for India, and he were of the opinion that—I quote his own words:—

> "the whole question of salutes needed most careful investigation in view of the anomalies which appeared to exist; and we held, therefore that it would be unwise to base upon *the salute list,* as it stands, any fundamental distinctions between the more important States and the remainder. It *appeared to us that, if such a distinction is made, it must be* based upon constitutional considerations; that is to say, upon

the nature of the link between the individual States and the Crown."

Again, at the next Princes' Conference on the 3rd November, 1919, the Viceroy referred to the same question in the following words:—

> "Your Highnesses will remember that, in my last speech, I said that Mr. Montagu and I felt that the whole question of salutes needed most careful investigation in view of the anomalies which appeared to exist. If the principle I now advocate is to be adopted as the basis of classification, it will be additionally desirable that this investigation should be undertaken at an early date, in order that anomalies, whether already existing, or likely to ensue, from the institution of the dividing line, should be corrected wherever possible. My Government are ready to give their earnest consideration to this matter, and will make the necessary recommendations to the Secretary of State for submission to His Imperial Majesty in due course."

But unfortunately nothing has been done.

Now, Sir, if I may, I will make a few essential observations regarding what are known as the smaller States, whose cause especially in this connection was so ably and sympathetically supported by His Highness of Bhopal in particular during the last Session. I state, with a full sense of responsibility, that this problem will be an extremely important consideration in all matters affecting the Indian States. It is inevitable that the position of the larger territorial units amongst the Indian States should loom prominently; but I am free to admit, as the Ruler of one of the important States in India, that although it would tickle my vanity to think only of myself as Ruler of one of the bigger States, that will not work in the problems before us. I beseech you all—whether you are Members of His Majesty's Government, or of the important Parliamentary Political Parties in Great Britain, or Delegates from British India, or from the Indian States—not to let there be any misunderstanding on this point. The adequate and due representation of the smaller States (and I refer to the smaller States proper, and not to various units which do not come under the category of sovereign States) in the Federal Legislature, is not only a matter, therefore, of great importance to the States as a body; but, it is my honest and unshakable belief, of very direct and immediate consequence to the success of the Federal scheme, as far as the States are concerned. I hold strongly that the interests of the smaller States are the interests of all the States. Their welfare and continued existence is our most jealous care. Their sovereign rights and privileges it is our duty also faithfully to safeguard, as it is also our duty to further all their legitimate aspirations and to consider with sympathy, and to support, all their reasonable demands.

My Lord Chancellor, After all, the so-called smaller States (which is at least largely a matter of comparison) comprise also

several of the 109 States which individually are members of the Chamber of Princes in their own right. It is possible that when the claims of some States, who are not at present members of the Chamber in their own right, are further examined, there may be some who will be found entitled, by a slight adjustment, or concession, of their sovereign powers or by further examination, to be held eligible for membership. I will not hazard a guess as to numbers. That question does not immediately arise here since, in the first place, it concerns membership of the Chamber of Princes, and will also be taken up in regard to the revision of its constitution.

I wish to emphasise that nothing less than 125 seats for the States is at all likely to satisfy the claims of the States as a body.

I would conclude my observations to-day by reminding this Committee of what I have repeatedly urged and stressed in the past —here in the Round Table Conference and elsewhere—namely, the importance and need, in justice to the States and their subjects, that the representation of the States in the Federal Legislature cannot be based merely on area or population, but that regard must also be had to their sovereignty and internal autonomy, their relations with the Crown, their political importance as one of the two great separate entities in India, and also—to quote from the Simon Report—

> "their existence and influence, and the Crown's obligations in regard to them".

After hearing the debate yesterday, I now desire to give expression to my personal and definite view that a test of 51 per cent of the population of the entire Indian States' territory will not suffice as a test for the States joining Federation. What number that should be, or what the number of States joining should be, I shall probably have an opportunity of dealing with, and of expressing my final view upon, after we have discussed the point in our Delegation.

Chairman: Before I call upon *His Highness* of Dholpur, I think I should read a letter which I have received from His Highness, as it will explain his position. What His Highness says is this:—

> "The speech that I am making to-day has been purposely *so framed as not to raise controversial issues of an intricate* nature at this stage. It was necessary to do so, in view of the fact that at yesterday's meeting of the States Delegation, it was found to be necessary to continue further discussions on the matter there, before it was released to the Federal Structure Committee in all its details.
>
> I have, therefore, to postpone the idea of having the draft proposals circulated to all the members of the Committee for *some time later.*

At present, I am confining myself to general reference to the main idea underlying the proposals and to answering the questions under Head 1, which we are discussing."

Sir Akbar Hydari: May I make a personal explanation at this point? I simply want to say that what I said yesterday was by way of an illustration to show as to how, if we decided to adhere to the number in the Upper Chamber as being only 100 and the number in the Lower Chamber as being only 200 (in case we were forced to have a bicameral House), that even a number of seats like 50 would go round and could represent adequately the Indian States in a sufficient way to allow all these States to send representative statesmen to safeguard the Indian States' rights. So far as the tests of priority, grade, and so on, are concerned, I said nothing. All those tests which His Highness of Bikaner has read out may be applied, and then the number distributed. All I wanted to say was that it was possible to frame a scheme whereby even 50 seats could go round, and thereby enable the two Houses to have that evidence of stability, and to have those men of experience, on which I have been all the time insisting. I took the population basis as the test which I had readily at hand—which was the most definite, and which was the most up to date which I could obtain—but I did not thereby say (and I think I made it clear) that the population test was to be applied finally in determining the relative importance or the number of seats to be given to the different States *inter se*. I also said that I think, as Sir Mirza Ismail has said, that probably it will not be possible to come to any agreement among the States themselves by mutual conversations, and what we were afraid of was that, if we started here, such a type of atmosphere would be engendered as would not be very conducive to a peaceful settlement ultimately—which would be the case, if, in the first instance, the whole ground was explored by an independent body of the kind to which it would have to be referred in any case in the end.

H.H. The Maharaj Rana of Dholpur: Lord Chancellor, At the last Session of this historic gathering, the great principle of a united India was evolved and a large number of the States represented here generally approved of the idea of an all-India Federation. It was on that basis that the outlines of a constitution were worked out by the Federal Structure sub-Committee. After the adjournment of the Conference in January last, the scheme of Federation was examined minutely in all its aspects by the Princes in India. My brother Princes had occasion to discuss it at the last session of the Chamber of Princes and at subsequent meetings specially convened for the purpose. As a result of these discussions they came fully to realise and appreciate the delicate implications of the various provisions concerning the States. At many places the scheme had purposely left out certain very important points, like the composition of the Federal Houses, the proportion and method of representation of the States therein, and so on, without which the picture was not complete. It is these points which we

are discussing now; and the Princes felt that it was their duty to contribute their own ideas to the solution of these problems in a way which would be satisfactory from all points of view, and would at the same time provide essential safeguards for their internal sovereignty. On the one hand, they were quite clear in their minds that it is essential, in the larger interests of India as a whole, to devise suitable means for co-operation between British India and the Indian States. They are fully conscious of their duty to India as a whole—and here, I am sure, I am speaking on behalf of the entire Order of Indian Princes—that they have never tried to stand in the way of or retard the political advancement of British India and the fulfilment of its legitimate aspirations. On the contrary, they, as sons of Mother India, will be glad to see India achieving its due and proud place of an equal partner in the British Empire. On the other hand, they are deeply concerned about the responsibility that lies on their shoulders as the trustees and custodians of the rights and privileges of their beloved subjects and of their proud and age-long heritage. Nor can the Princes, who have loyally stood by the Crown through peace and war and have made genuine and affectionate sacrifices for His Imperial Majesty—of which the British Government are fully aware—ever disregard their traditional and time-honoured relations with the British Crown, and countenance suggestions which may lead to consequences not compatible with the maintenance and continued observation of these obligations of honour into which they have entered.

Having these considerations in view, a section of the Princes felt it to be their duty to devise means which would provide for the evolution of United India, while maintaining unimpaired and secure the internal sovereignty of the States and their relations with the Crown, without altering the basic principles, underlying the great labours of the Round Table Conference last year. For this purpose, a conference was convened at Bombay last month, at which, after prolonged discussion, proposals were framed to achieve the object in view. I have been authorised by the conference to lay those proposals before this Committee for the consideration of its distinguished members.

I must, if I may, in the beginning, make it quite clear that we have been wrongly accused in some quarters of trying to wreck the all-India Federation. Our only difference is about the way in which this Federation is to be brought about; and I have already indicated above that the way that we adopt should be such as would satisfy the considerations enumerated.

The Simon Commission visualised two distinct ways in which an all-India Federation may be achieved. One way is that the States individually should come into a Federation with British India or its Provinces, and the other is that the Indian States may first confederate between themselves, and then this confederation should federate with British India, whether constituted on a federal or unitary basis, or with the Provinces. This committee adopted the first alternative; and they proposed to avoid the difficulty pre-

sented by smaller States, which possess small areas and populations, by providing to group them together for the purpose of federation.

The scheme drawn up last year lays down that:—

> "the component elements of federation should be on the one hand—
>
> (*a*) the federating Provinces of British India, and on the other hand,
>
> (*b*) such Indian States or groups of States as may enter the Federation.
>
> Provision should be made for the subsequent entry from time to time of such further States or groups of States as agree to enter the Federation."

It leaves the States free to join or not to join. It is frankly admitted that a large number may not join immediately. Taking the 109 sovereign States, which are members of the Chamber of Princes in their own right, supposing 50 of them join while the rest decide not to join, what will be the quota of representation that will be allotted to those States which decide to join. The claim for 50/50 representation, advanced by the States here, is based upon the clear assumption that the whole of Indian India is coming in. We know for certain that the whole of British India is coming in, but we do not yet know similarly anything definite about the Indian States. Along with this, we have to remember that, even if all sovereign States were to be recognised as Units for representation, the question of the large number of big and small Units which do not enjoy the same amount of sovereignty would still remain; and grouping them regionally, or on some other basis, to form Units for federation and representation in the Legislature, does not seem to be a way out of the difficulty, as I am afraid it may not be easy to find a basis for forming groups which would satisfy the various States brought in, as their interests and requirements may be varied and not always easily adjustable. Presumably, they will be formed on the regional basis. Take Kathiawar—apart from a few big States, which might get individual representation, most of the others will have to be grouped together. Supposing some of them stand out at the beginning and those that join are grouped together, are the groups to be re-arranged when some of those others decide to join? In that case it would not be easy to find a formula which would ensure the Federation to run undisbursed, as there will be continuous re-shuffling of groups till all the States have come in.

Then, there is the question of the position of the States which decide not to join. What is to be their position as regards their relations with the Viceroy, representing the Crown, on the one hand, and with the new Federal India on the other?

Besides that, the question of allotting representation to those different States and groups of States would in itself present great difficulties. It has already been very widely discussed, and the replies received to a questionnaire, issued by His Highness the

Chancellor of the Chamber of Princes, go to show that the Princes or States are by no means agreed on that point.

These are some of the questions that arise out of, and seem to be inherent in, the scheme as it stands to-day. There has been a great deal of discussion on these questions here and different solutions have been offered. The solution of all of these difficulties appeared, to many of those that I have the honour to represent, to lie in bringing about some sort of Union of States mainly for the purpose of federation with British India. It is obvious that many of the States will have to be grouped in order that they may form Units for representation in the proposed Federal Legislature; then why not let us have one group of all States put together, big and small, so that the process may be simplified and difficulties and possible misunderstandings may be overcome.

There arises the question as to whether the bigger States can be expected to agree to such a proposal, but I, for myself, see no reason why they should not, if their share of representation in the Federal Legislature is guaranteed even through such a Union of States, and it is not difficult to devise means for doing so.

It has been generally recognised by all concerned, and has been definitely provided in the first Report of this Committee, that the elements of federation are to be two, British India and Indian India. This was also emphasised by the Secretary of State in his speech yesterday, when he referred to two interests combining to form the Federation. This is just the real situation, and I would urge that these elements of federation may be more definitely appropriated to the position of the units of federation. It would simplify matters a great deal if we have a Union of States joining hands with federated British India or federating British Indian Provinces. There would be no continuous reshuffling of groups or of constituencies, no difficulties about allotments of representation, and so on; and it would tend to smoother working and a greater stability of the Legislature. If the States are so grouped together, the question of the method of election also becomes simpler. It is proposed that this Union should form an electoral college to elect representatives on behalf of the States for the Federal Legislature. Of course provision will be made for the due representation of the bigger States, of all regional and special interests, and for the proper representation of the smaller States.

I am glad that the bulk of opinion expressed by my friends from British India seems to be that the question of the methods of the representation of States should be left to be decided by the States. I am glad at this spirit of accommodation that they have exhibited; but may I put it to them that the proposals that I have the honour to submit would introduce the principle of election by a joint electoral college, and it would be a distinct advance on nomination by the governments of States individually.

I may point out another benefit that will accrue to all India from this method. If individual States are allowed to send their

representatives to the Federal Legislature, it may not be possible for some of them to find the talent, which the Federal Legislature would greatly value; but, if representatives are returned from an electoral college, we will be able to put at the disposal of the Federation the united wisdom and the selected talent of the States. This would be a sure guarantee that the right sort of element will come to the Legislature, which will further ensure its stable character, and, consequently, that of the Government as a whole, the value of which cannot be minimised.

It cannot for a moment be disputed that this proposition is practicable, and I see no difficulty in bringing it about, for the framework of such an institution already exists in the Chamber of Princes. The Chamber is at present an officially recognised advisory and consultative body. It can easily be developed to serve the above purpose if it is allowed to function also for the purposes of the all-India Federation. As to minor details about the reconstruction and expansion of the Chamber for this purpose, we need not refer to them at this stage. Those are matters which concern the States exclusively.

I think that I have taken up a good deal of the valuable time of this Committee, and I feel that I need not go into the details of this method at this stage, particularly in view of the fact that the consensus of opinion on this Committee happily seems to be that the question of the method of election to the Federal Legislature should be left entirely to either party to decide.

After these general remarks, I now come to the questions, which have been under discussion here, under Head 1. My reply to the questions is the following.

In reply to questions numbers (i) and (ii), I do not think that it is easy to prescribe any numbers. All that I want to emphasise is that the Federal Houses of Legislature should be capable of accommodating all the multifarious interests that may legitimately seek and deserve representation.

On sub-head No. (iii), I am in complete agreement with the view which has already been expressed from this side of the House. The reasons that justify the claim of 50/50 in the Upper House and $33\frac{1}{3}$ per cent. representation in the Lower House, are, firstly, what I have already mentioned above, namely, that two distinct interests are combining to form the Federation, and it is a recognised and well established principle of federation that, in the Upper House at least, all federating units are equally represented. Besides that, though population is a criterion and an important one, sovereignty and its sacrifice, political position, and many such other considerations, must be given their due weight in deciding this question.

Then there is point No. (iv). In view of this suggestion that I have made, that the States should form one group for purposes of federation, this question also admits of easy solution. This group

will be entitled to all the representation which may be allotted to
the States from the very start. Those States that join later will
be admitted into the group and will find their places, and it will
not at all disturb the arrangement so far as the Federation is con-
cerned. Of course it is hoped that, under this idea, a large majority
of States will join the group from the very beginning.

Point No. (v) does not concern the States.

This, my Lord, is my submission in brief.

In the end, before I close, I would like, if I may, to refer to the
cordial feelings which have been expressed by our friends on the
other side with regard to the part that the States Delegation has
played in the evolution of a scheme for United India, and I heartily
reciprocate those feelings. As I have already said in the beginning,
the Indian Princes are only too glad to be able to serve the cause
of the country as a whole, which I may respectfully point out is
not a new thing in history. This is not incompatible with British
India or its Provinces enjoying autonomy and the Indian States
enjoying their sovereignty in their different spheres. I welcome
the very laudable offer of give-and-take, which has come from one
of the greatest leaders of India, on whose sympathies, whatever
claims British India may have, the States have a claim by
reason of his birth in Porbandar—an Indian State—and I
heartily accept it in the spirit. But may I venture to suggest
that, what I honestly believe is more necessary for bringing about
a lasting and really friendly feeling, which alone can form a solid
basis for an agreed solution, is that give-and-take may be exercised
in the humane and truly accommodating spirit of live and let live.
We have our different systems of government, and it seems to be
futile to attempt to bring all to agree to the same system throughout
with a stroke of the pen. Let us remember, Rome was not built
in a day. If the States are to come into a federation—and they
have been welcomed into it—they should not be expected to give
up those ideas and institutions which have stood the test of time
and proved to be good and wholesome, and supplant them with ideas
and institutions copied from abroad and still undergoing a crucial
test. Let them live in their own way to advance and evolve their
own systems; and then, perhaps, they will be able to make solid
and concrete contributions to the political growth of India as a
whole, which may be truly great. Let them evolve some system
of government, which, while preserving the essentially Eastern
character of paternal monarchy—the treasured inheritance from the
ancient and immemorial traditions and culture of India—will
satisfy the people's requirements and will not be foreign to their
genius. While the foundations of a United India are being laid,
our aim should be not to look to the immediate future only, but to
pierce through the mists of uncertainty, and cast our glance ahead
to times when the coming generations of our Motherland will taste
with relish the fruits of the mighty tree which is being planted
now, and will bless those who have spent their time and sacrificed
their comforts to bring it into being.

H.H. The Maharaja of Rewa: My Lord Chancellor, Bearing in mind the views which have been expressed from this side of the table by my colleagues, both brother Princes and the eminent Ministers, it is unnecessary for me to cover the same ground. Almost all the points have been touched upon and discussed. There is, however, one point to which I have attached a very great importance ever since the question of federation came into the arena of discussion. This question is the distribution of the States' representatives among themselves, and is, to my mind, of vital importance.

The term "bigger and small States" has often been used, sometimes casually, and at other times seriously; but the definition on which the comparison is going to be based in the future is not yet decided. I admit that it is a question which concerns the States alone, and the decision will have to be arrived at between the States, with the assistance of the Crown, if they feel unable to decide it unaided; but I wish to make it abundantly clear that Treaties, internal sovereignty, tradition, and historical importance are facts which cannot be lost sight of when the time comes for deciding upon the definition of bigger and smaller States.

I should therefore like to urge that any definition based merely on population and area, etc., will not satisfy a very great majority of States. Treaties must be taken as living factors which should not be minimised if the adherence of the majority of the States to the Federation is to be achieved. The States on the whole will not view with equanimity any proposal whereby their long-enjoyed and time-honoured sovereign status is placed in jeopardy.

I feel certain that my brethren in British India will sympathise with us when we try to safeguard our existence; and I am also convinced that the Crown, which has taken upon itself the duty of seeing that our Treaties are honoured and respected, will also bear this fact in mind. When I say this, my words should not be taken to mean that I wish to stand in the way of constitutional advancement. The importance that I attach to our Treaties and other time-honoured factors is not only on behalf of the conservatives amongst the States, but I hope and expect that it will be shared by the majority of Princes in India.

Now, My Lord, I have said what I have to say, and I am extremely grateful to you, Sir, for having given me the opportunity of expressing my views.

Sir Tej Bahadur Sapru: My Lord Chancellor, In obedience to your behest, I would like to make the few observations I have to make as brief as possible, on the various points that have been raised on this side of the House or on the other. But before I do so, I shall crave the indulgence of my colleagues to remind them of something which we are apt to forget as discussion develops and arguments multiply. We are sitting here at this Conference upon definite terms of invitation which we accepted last year, and which those who were not present last year, but who have come now, have

accepted this year. The whole object of this Conference was—an
I should think, is—to see whether, on constitutional questio
affecting the whole of the country, it was possible to arrive at
maximum amount of agreement. I have not the least doubt tha
if the task of drawing up a constitution for India could be entrusted
to any one of us, each one of us could give a complete constitution
within 24 hours or less. But that would not represent the maximum
amount of agreement. Nor do I think, in a Conference of this
character, where we are sitting exclusively and expressly with the
object of exploring our views for arriving at a common agreement,
that there is much room for ultimatums or mandates or solicitors'
notices. If there are differences which divide us, those differences
must be solved. If there are different points of view which have
got to be reconciled, they must be reconciled. We are not here,
I fancy, to go back upon decisions which we arrived at last year—
tentatively, no doubt, but with the distinct feeling in our minds
that we owed it to ourselves and owed it to the country that, so far
as possible, we would strive to bring into existence what I imagine
to be a greater India. That is the whole object that we had last
year in view, and that is the object that I think we have in view
this year.

Now, My Lord, these being the conditions of the problem which
we have to attack when dealing with the question of a federation
with the Indian States, there are just a few facts which it is
necessary to bear in mind in dealing with these questions. We are
providing, or seeking to provide, a constitution for a country con-
sisting of something like 350,000,000 people. Out of these
350,000,000 there are something like 80,000,000 in the States. If I
am wrong in my figures, I hope I shall be corrected. We have also
got to reconcile the claims of a Federation with the claims of Their
Highnesses to sovereignty. Now, let me assure Their Highnesses—
which I think it is perfectly unnecessary for me to do at this stage—
that, so far as we on this side are concerned, we have never conceived
any designs upon their sovereignty. On the contrary, we have
always conceded and gladly recognised that, in regard to their
internal autonomy, their sovereignty shall remain unaffected in the
slightest degree. Therefore, what I venture to remind Their High-
nesses is that it seems to me, if I may respectfully say so, perfectly
superfluous at this hour of the day to remind us of Their Highnesses'
claim to be sovereign Princes, and that they are anxious to preserve
their sovereignty.

H.H. The Maharaja of Bikaner: Some others who were not here.

Sir Tej Bahadur Sapru: Very well. But it is obvious that, to
e extent to which Their Highnesses agree to come into the
deration, there will be a derogation of their sovereignty to the
v State which will come into existence, namely, the Federal
te of India; and I would beg Their Highnesses, and particularly
Highness The Maharaj Rana of Dholpur, to remember that
Federation which will come into existence will not be a Govern-
of British India. It will be as much your Government as it

will be ours. You will not then be dealing with an outside agency; you will be dealing with an agency or with a Government which you can as legitimately claim to be yours as we can legitimately claim it to be ours. The decisions will be common decisions. The decisions will be arrived at upon a mutual exchange of opinion between the representatives of British India and the Indian States. Therefore, let there be no such feeling that British India is trying to scheme itself into a position of superiority over the Indian States. I wish to say these things at this juncture because, to be absolutely frank, I have discovered a sort of undercurrent or a suggestion to that effect. Let me tell you that that is entirely absent from our minds.

Now, we have all had the pleasure of hearing His Highness The Maharaj Rana of Dholpur to-day. We feel that we have not had the advantage of having the scheme associated with his name placed before us. We wish it had been circulated to us. In the few observations that I shall make now I shall bear in mind the remarks which fell from His Highness The Maharaj Rana this morning. He has justly spoken of a Union of Indian States to precede the Federation. I should like, in all humility, to put a few questions—not by way necessarily of criticism, but in the expectation that, at some time or another, a reply will be forthcoming to them.

First of all, we on this side are entitled to know what is the strength of feeling behind that idea of confederation. How many of the Indian States out of the 125, or out of the 600 odd to which exception has been taken by His Highness of Bikaner, are committed to it? Then I should respectfully like to know within what reasonable distance of time do the authors of that scheme expect that the idea of confederation will materialise. Also I should like to know what is to happen during that interval. Again, I should like to know whether they seriously think that it is to the advantage of the Federation that we contemplate, or whether it is to the advantage of British India or whether it is to the advantage of the Indian States, that two units should be ranged into opposite camps in a common Federation—British India claiming to have its own mandate and Indian India claiming to have its own mandate; and who is going to solve the problem when each section is going to have its own mandate thrust at the other. I should also like to know whether it has been seriously considered if this electoral college will at all be a workable and feasible scheme; whether the Indian States, big or small, will feel satisfied that the task which they ought to perform themselves in their individual capacity should be performed for them by a collective body like the Chamber of Princes. If they will feel satisfied, then I wish to ask them in all humility—and it is not for me to answer, it is for Their Highnesses to answer—what becomes of their sovereignty, to which they attach so much importance. They will be imposing upon themselves a super-sovereign in the person of the Chamber of Princes. Let me give them that warning. I will not deal with this question further. If His Highness of Bikaner, or

His Highness of Baroda, or His Highness of Indore, or His Highness the Chancellor, do contemplate with equanimity the Chamber of Princes legislating for them on "Central" subjects, then I wish them joy of it in all humility.

These are some of the ideas that strike me as arising out of the speech and out of the scheme suggested by His Highness The Maharaj Rana of Dholpur. Frankly, I would have liked that scheme to have been circulated. I have my own point of view about it, but I will approach the scheme with the respect that is due to His Highness The Maharaj Rana of Dholpur and his other associates. I will approach it with an open mind; but I do give a warning—and I hope I shall not be misunderstood—that the scheme suggested by His Highness The Maharaj Rana of Dholpur is not one which will facilitate the creation of the Federation which we have in view. I will not take more time over this subject.

Yesterday, His Highness The Chief Sahib of Sangli put forward the views of the smaller States. If His Highness will permit me to congratulate him on the speech which he made yesterday, I will do so with the greatest pleasure; and I venture to give him the assurance that nothing is further from the minds of us all on this side than that, in this confederation, the smaller Indian States should not receive their due and proper share. How that will be done is another question. We are all anxious that the Federation which we are trying to bring into existence shall be as wide and as complete as it possibly can be under the circumstances. At the same time, I am aware that the constitution which we are evolving is not by any means perfect, and is not going to be perfect for some time to come. But may I respectfully ask what constitution is there in the world about which it can be claimed that it is perfect in all respects? A constitution is like a living organism: it must grow. It must grow in the light of experience, in the light of new knowledge, and in the light of new circumstances which must arise. Therefore I will make an appeal to both sides of the House that, if there are certain features of the constitution which do not strike one as being perfect either from a purely democratic point of view or from the point of view of the Indian States, let us not aim at too much. Perfection will come in course of time; but, meanwhile, our aim ought to be to get a working constitution with which we can make a good start.

Now, My Lord, there are just two or three essential propositions which require consideration. One argument which has been put forward on the other side of the House by Their Highnesses [illegible] in the case of a federation, there must be perfect equality between state and state. I will beg Their Highnesses [illegible] exactly is meant by "equality" of a state [illegible] will venture to say, with gre[illegible] a part of, or a basic elem[illegible] world that there must [illegible] federations in which the[illegible] are other federations in wh[illegible]

We have been constantly reminded of the United States of America. There were historical reasons existing at the time of the American Revolution which compelled the American States, big and small, to adopt the system of equality of representation. On the other hand, there are federations, quite as important as the American, where there is inequality of representation. Let me remind Their Highnesses of one federation which it is quite fashionable to mention on the other side, namely the German Federation—the Bundesrat which we have heard so much about. I will not say anything in my own language, but I will just read a small passage from a standard book on the German Constitution. Mr. Oppenheimer says:—

> "The vast difference between the German States in area and population, in wealth and in power, a difference unequalled in any other federal state, rendered it impossible to reduce, for instance, Prussia and Schaumburg-Lippe to a common factor, and had already in the German Confederacy caused the logic of international law to succumb to the logic of facts. The Bismarckian Constitution had adopted, with but slight variations, the distribution of votes in the old Bundestag, and its republican successor has changed the principle, but not to a vast extent the practical result, when introducing the test of population. From the latter there are, however, two deviations:—
>
> (1) Each State, even the smallest one—and the smallest one has less than 50,000 inhabitants—is given at least one vote, a clear concession to the federal principle;
>
> (2) No single state may have more than two-fifths of the total votes."

Therefore, My Lord, I think that it cannot be predicated that there must be equality of votes. It is perfectly true that the political status of each single unit of the Federation will be equal to that of the others. At the same time, while I hold that equality of representation is not the necessary ingredient of federation, I also hold that, in the peculiar circumstances of India existing as they are, and in view of the great experiment that Their Highnesses have agreed to try in a spirit of confidence and co-operation with us, they are entitled, so far as the Upper House is concerned, to a certain amount of weightage. I maintained that view last year, and nothing that has passed since last year has convinced me that the view which I took last year was wrong.

H.H. The Nawab of Bhopal: Sir Tej said something about Prussia. Was it not the case that Prussia had 17 votes out of the 51 votes?

Sir Tej Bahadur Sapru: In the old constitution, yes. I am talking of the new one. Even in the old one there was not equal representation. That was the point I was making.

H.H. The Nawab of Bhopal: I only wanted to point out that in Prussia, under the old constitution, they had 17 votes out of the 51, as I understand. Can Sir Tej confirm that?

Sir Tej Bahadur Sapru: I do not exactly remember, but Prussia predominated. I can verify that, Your Highness is quite right that Prussia was predominant.

H.H. The Nawab of Bhopal · And Prussia's interests were two-thirds.

Sir Tej Bahadur Sapru: Yes. The point, Your Highness, that I was making, was that there was not equal representation of all States. There was not equality.

H.H. The Nawab of Bhopal: I would not have interrupted you, but I *only* wanted to make out that Prussia, the biggest part, had only 17 against one-third having about 34. That was my only point.

(At this point Lord Sankey left the Chair, which was taken by Lord Lothian.)

Sir Tej Bahadur Sapru: You are right, Your Highness, Prussia had a total of 17 out of the 51. I have just seen the book.

Now, I will just say that, in view of the peculiar circumstances of India, and of the great experiment that is going to be tried, and particularly in view of the fact that in the Upper House the States *must be represented, I think the Indian States are in fairness* entitled to a weightage. What exactly that weightage will be is a different question. Their Highnesses have asked for 50/50 representation. I would beg them to bear in mind that while we, on this side, would be very willing and very glad to follow the advice which Mahatma Gandhi gave us on the first day—namely, that we should make it easy for Your Highnesses to come into the Federation—we should also like Your Highnesses to make it easy for us to accept the Federation and to carry with us opinion in British India. For this reason it was that I ventured to suggest last year that Your Highnesses should accept 40 per cent. of the representation in the Upper House and I was glad that yesterday Mr. Sastri took exactly the same view. Therefore I take it that, so far as representation in the Upper House is concerned, it is capable of *adjustment. It is not one of those rocks on which we can wreck* the ship. I was a little amused yesterday when I found opposition to the weightage of the Indian States from my friends Dr. Shafa'at Ahmad Khan and Mr. Zafrullah Khan.

Dr. Shafa'at Ahmad Khan: May I just say that, when I was speaking on the quantum of representation, I was speaking on behalf of the whole group here?

Sir Tej Bahadur Sapru: I thought the objection was to *weightage, to the very principle of weightage;* and I thought the position was that the representation must be on a strict population basis. It came to me as a surprise that my friends over there should have lost faith in weightage. Frankly, I am one of those men

who have always asked for weightage—I have no objection to it at all. But while it was being argued that the Indian States should not have weightage in the Upper House, I wondered where that argument would lead to in another committee. I will not say anything more with regard to that.

Mr. Jinnah: I think that is not quite the correct representation of our position.

Sir Tej Bahadur Sapru: I should like you to correct it.

Mr. Zafrullah Khan: Sir Tej Bahadur Sapru has neither paid me the compliment of listening to my speech nor paid me the compliment of reading a copy of it.

Dr. Shafa'at Ahmad Khan: And I say the same.

Sir Tej Bahadur Sapru: I should like to be corrected.

Mr. Jinnah: Yes, if you like. The correct position is this. We do not say that in no circumstances is a party entitled to claim weightage. The view that we take is this, that having regard to the fact that the Indian States are coming in only for certain specific matters which are of such negligible quantity for the purpose of an all-India Federation, and having regard to their stake, they do not need weightage. After all, what is the weightage for? The weightage is for the purpose of protecting the interests of a party. What is the interest of the Indian States which will not be protected if they are given representation without weightage? I see no ground that has been put forward yet which can convince us that their interests will be jeopardised unless they get weightage. That is the reason why we say we are not satisfied up to the present moment with any reason which has been put forward for giving them weightage.

Sir Tej Bahadur Sapru: Then I take it, Mr. Jinnah, that you are not opposed to the principle of weightage.

Mr. Jinnah: I am certainly not opposed to it, but the point is this, Sir Tej. I have not yet heard a single argument which would satisfy me that weightage should be given to the Princes as a safeguard because their interests will be in jeopardy or danger. That is the point.

Mr. Zafrullah Khan: With Sir Tej Bahadur Sapru's indulgence and Your Lordship's, may I just draw attention to two very brief extracts from my speech yesterday, in order to emphasise on what grounds I put forward the suggestion for the consideration of Their Highnesses. Those are these:—

> "The Federal Structure sub-Committee has made a recommendation . . . . that the federating Units will be the Indian States or groups of States on one side and British Provinces on the other. Therefore, as I submitted in my very first speech in this Committee, there will be no question of preponderance of any Unit in this Federation. But let us go further than this theory and let us look at actualities for a moment. I realise that if British India were coming

into the Federation as one Unit—if British India as one entity had common interests which might under some possible circumstances come into clash with the common interests of the States among themselves—if British India had one separate culture and the States *another*—if British India were inhabited by one race and the States by another race—if the people of British India were the adherents of one faith and the people of the Indian States of another faith—if there were any such cleavage or division between British India *as a whole on the one* side and the Indian States as a whole on the other—these would have been the strongest reasons for Their Highnesses insisting that, being the smaller partner in the Federation, they should be "given a certain amount of weightage; and that would have been *met generously on the side of British India.* But, happily, there is no such difference. As Their Highnesses have themselves said, very often the division of interests and the question of voting will be decided on the ground of regional distribution rather than on the question of the yellow or the red *colour on the map.*"

"That being so, my submission is that, having regard to the fact that matters that are of supreme importance to the States *and are peculiar to them are being excluded from the* Federation—the Federation relating only to certain matters of common interest between Indian India and British India, and also including the policy, legislation and administration of certain subjects that are entirely British Indian subjects—I would beg Their Highnesses *to reconsider this question of* weightage."

Sir Tej Bahadur Sapru. I can assure Mr. Zafrullah Khan that I listened *to his speech with the utmost possible respect, and this* whole paragraph was present to my mind. It may be my misfortune that I do not agree with him.

Mr. Zafrullah Khan: Yes, I think that is so.

Sir Tej Bahadur Sapru: But I should not like to plead guilty to the charge that I did not pay sufficient respect or attention to his speech.

Mr. Zafrullah Khan: You said I had given up the question of weightage.

Colonel Haksar: I do not want to interrupt Sir Tej Bahadur Sapru at this stage; but might I beg that note be taken of the fact that, later, when you are in a position to allow me, I should like to refer to Mr. Jinnah's remarks, particularly the remark that the quantum of the proposed Federal scheme, viewed from the point of view of the States, is so negligible that they have *no interests to* guard?

Sir Tej Bahadur Sapru: I do suggest that the Indian States are *most vitally interested in matters which produce revenue, in*

matters which affect their exchequer, and in matters which affect their subjects. I suggest that, so long as there are matters like Customs and Railways, and things of that kind, which produce revenue, and which affect large tracts of territory in British India and the Indian States, they are entitled to see that their views are put forward adequately and by a sufficient number of representatives. On that principle I do suggest that it would be right and fair that they should get some weightage in the Upper House. That this is so will appear from the fact that, even in America, the test which has been adopted is not merely the population basis for the Upper House. I will only refer to the population of a few out of 48 of the States. For instance, the population of Massachusetts, New York, Pennsylvania, Missouri and Delaware varies very much, and yet they have been given an equal amount of representation, which in the case of the small States means a weightage.

Mr. Jinnah: It is a very different federation from that which we are contemplating.

Sir Tej Bahadur Sapru: Similarly, in Canada, the Maritime Provinces are small in numbers and have weightage. I can give other instances. Therefore, I say that, so far as the Upper House is concerned, there is to my mind a good case for a weightage being given to them. Mr. Sastri suggested yesterday, and I repeat the suggestion, that Their Highnesses should agree to a 40 per cent. representation in the Upper House.

When I come down to the Lower House there are different considerations which apply. So far as the Lower House is concerned, I would beg to remind Their Highnesses that the position which we on this side have taken is that they must take certain steps to give a voice to their Legislatures where there are Legislatures, or to secure the popular representation of their subjects. There I would like to ask Their Highnesses why is it that they want a weightage in the Lower House? For whose benefit is it, and in whose interest? After all, when you bear in mind that there is going to be a provision for a Joint Session of the two Houses whenever there is a conflict within the two Houses on any material question, there does not seem to me to be any valid reason for weightage so far as the Lower House is concerned.

Coming then to the strength of the two Houses, a variety of opinion has been expressed at this session. It has been suggested in certain quarters that the interests of economy required that the Houses should be very small. On the other hand, it was suggested that, from a purely democratic point of view, it is necessary to try to secure representation of different interests, and that, therefore, the Houses must be very much larger. I would remind you of what was the recommendation of the Nehru Committee Report. So far as the Nehru Committee Report is concerned, it must be borne in mind that the authors of that Report had nothing to do with a federation such as we are now trying to contemplate. We were at that time thinking of a federated constitution for British

India alone, and we recommended at that time that, so far as the Lower House was concerned, its strength should be 500, and that, so far as the Senate was concerned, its strength should be 200. Now that the Indian States are going to come in, as I hope they will, it is necessary for us to bear in mind that fact. While I like to secure efficiency in the Government, I do not think that efficiency in the Government can be very much affected by the existence of a larger Legislature. Therefore, the conclusion at which I have arrived is that, so far as the Upper House is concerned, its strength must be raised from 200 to some other reasonable figure. Whether it will be 250 or more than 250 is a question which will depend upon whether Their Highnesses agree to our suggestion that they should accept 40 per cent. representation. What I would suggest to Their Highnesses is that it would be for them to say what is the minimum number of representatives of their States in the Upper House which will satisfy their need. I believe that His Highness The Maharaja of Bikaner said this morning that 125 is the minimum number which will satisfy them. His Highness The Chief Sahib of Sangli suggested yesterday (if I am wrong he will correct me) that it must be 150. The difference between the two figures is not very much. I fancy that the whole basic idea of these suggestions is that there should be representation for all the bigger States and that the small States should be grouped together and brought into the House in that way. Speaking for myself, I would say that, so long as you have that percentage, 40 to 60, I would not object to a Senate of 250, or 300, or a little over 300.

Sir Akbar Hydari: I want to ask one small question. In the Nehru Report, was it contemplated that the Central Legislature should have only the subjects which we are now federalising, or were there many more?

Sir Tej Bahadur Sapru: It was all of them. They were Federal subjects, and there were many more. When the schedules of the Central Government and the Provincial Governments were drawn up in the Nehru Committee Report, there was no such question then as there is now. We had only Central subjects, or you might call them Federal subjects. We have here at this Conference, Provincial subjects, what you might call State subjects, then the Federal subjects, and then the Central subjects.

Sir Akbar Hydari: My remarks have been all along directed to the words "Legislature for Federal subjects." I only want to point out that, if the Nehru Report wanted 500 and 200, it was for Central subjects. That is my point. I mean I simply wanted to see whether I was correct in thinking that.

Sir Tej Bahadur Sapru: Surely Sir Akbar Hydari does not suggest that there should be a separate Legislature for Central subjects?

Sir Akbar Hydari: No. I am at present not at all concerned with that. All that I am concerned with is the Federal Legislature, into which the Indian States come, which is seized of Federal

other States are concerned. They may not like to come in at all, or they may like to come in after ten years or fifteen years; and, meanwhile, the few States which may join will exercise votes considerably larger in number than they should be entitled to having regard to the proportionate share that ought to go to them. For this reason, I would suggest, so far as the States which join are concerned, they must get their proper share. So far as the rest of the seats are concerned, they must remain vacant. If Their Highnesses are anxious to have safeguards to protect their own interests, I will beg of them to think of other lines of progress in that direction. But I do not think that, so far as British India is concerned, it will very readily agree to the whole of the quota being assigned only to two or three or four or five States which may decide to join.

Then, it was suggested yesterday and also to-day that, for the bringing into existence of this Federation, it will not be enough to have 51 per cent. of the Indian States or 51 per cent. of the population of the Indian States represented in the Federation. Well, I should have liked to have been given a definite figure which would have suited the views of Sir Samuel Hoare on one side, or of His Highness The Maharaja of Bikaner on the other. But that has not been done.

H.H. The Maharaja of Bikaner: They are not mine; they are the Delegation's views.

Sir Tej Bahadur Sapru: But my submission on that point is really this. It is premature to consider that question. Let the picture be completed. Let Your Highnesses be satisfied that the Federation is well worthy of your support; and if you come to the conclusion that the Federation is worthy of your support, then, to my mind, this question will be of more or less academic interest, because, for aught we know to the contrary, 75 per cent. of the Indian States, as Your Highness ventured to prophesy to the Conference last year, may come in.

H.H. The Maharaja of Bikaner: I still hold that view.

Sir Tej Bahadur Sapru: Then, as far as that question is concerned, I would like to wait before giving a final reply.

There is another question which has been raised, in which we British Indians are only indirectly interested, but in which, I must confess, we are interested; and that is the question which affects your internal relations and adjustments. On the one hand, it has been suggested by Sir Mirza Ismail and by Sir Akbar Hydari that, in the event of Your Highnesses refusing to come to an agreement (and I believe that Your Highnesses share that common weakness with us on this side), the decision must be left to an independent committee on which no partisan shall be represented. That was the view, I believe, of Sir Mirza. On the other hand, Your Highness read this morning a resolution passed by your Conference at Bombay, which, to my mind, more or less runs on the same

H.H. The Nawab of Bhopal: It was passed by the States' Delegation.

Sir Mirza Ismail: Sir Tej, I did not say that, in the event of no settlement being arrived at among the States themselves, the decision must be left to an independent committee. I did not mean that. I meant that no attempt should be made to settle anything.

Sir Tej Bahadur Sapru: That is, after all, a matter relating to method and to machinery; and, so far as that point is concerned, subject to one important condition in which we are interested—namely, that the smaller Indian States shall be adequately represented—we will leave it to Your Highnesses to settle among yourselves. The best machinery that you can devise, you will devise. That is a matter for Your Highnesses, so long as we can come to a settlement on the main question as to what shall be your share and as to what shall be our share. These are the various questions to which I wanted to reply.

Before concluding, I will venture to express one hope; and it is this. Difficulties are bound to arise in our way. There has not been a conference where critical situations have not arisen. I need scarcely refer to such critical situations in the presence of Lord Lothian or of Mr. Wedgwood Benn; they are more familiar with critical situations arising in International Conferences. Nevertheless, they have approached their task in an indomitable spirit; and I will venture to say to Their Highnesses that we are so strongly committed to this idea of federation that, in my opinion, it will be betraying our trust if, on small, trifling points, we are not able to accommodate each other. The real thing is to get into existence this Federation. The task of perfection we should leave to the future.

H.H. The Nawab of Bhopal: My Lord, May I make a statement? I do not want to comment one way or another on His Highness of Dholpur's scheme, because we are going to consider that among ourselves in our Delegation. His Highness referred to a questionnaire which had been issued by me, as Chancellor of the Chamber of Princes, to all the States. I think perhaps the figures will be helpful to this Conference, and I wish to have them recorded. The questionnaire was issued to 180 States belonging to the Chamber. Out of these, Hyderabad, Kashmir, Baroda, Gwalior, Nawanagar and Mysore, who are members of the Delegation, have not replied, but have expressed their views already in favour of federation. The States of Travancore, Rewa, Suket, Bharatpur and Kishengarh have not replied because, they say, they will await the complete picture before they give any opinion. In spite of the fact that only 15 days' time was given for the replies, 70 States have supported the Sankey scheme in principle, subject to their final confirmation and consent when the picture is complete; but they have expressed certain views in regard to details which are now being put forward from day to day by their representatives who are here. The States which did not reply have expressed their

regrets for not having done so owing to the shortness of time. Replies from those members of the Chamber who are members of that body in their representative capacity have generally agreed with the principle outlined in the Sankey scheme.

(The Committee adjourned at 1-5 p.m. and resumed at 2-30 p.m.)

HEAD 4.

Distribution of Financial Resources between the Federation and its Units.

The following points for discussion in connection with this Head were drafted by the Chairman:—

(i) *Is there to be a "Central" Budget distinct from the "Federal" Budget?*

(ii) *Is Public Debt*—(a) *past,* (b) *future—to be separated into "Federal" and "Central," and on what revenues is it to be charged?*

(iii) *How are the revenues and expenditure of the British Indian Provinces which are not Governors' Provinces to be treated?*

(iv) *What are to be the respective fields of taxation of the Federal and Provincial Governments? How far would it be feasible to assign only "indirect" taxation to the former and only "direct" taxation to the latter?*

(v) *To whom and for what purposes are the proceeds of Income-Tax in British India to be credited?*

(vi) *To what extent, if at all, will Federation necessitate surrender, by federating States, of rights to raise revenue within their territories, at any rate by "indirect" taxation*—(a) *as regards existing taxes;* (b) *future taxes?*

(vii) *Under Federation, will there remain any foundation for a general claim on the part of the States to a share of "indirect" taxation imposed by the Federal Government, or to any profits accruing from Currency, Railways, Posts and Telegraphs, etc.?*

(viii) *What principles should be applied in the case of* (a) *financial or material contributions made by some States, but by no British Indian Province, viz., cash payments, State Forces and territories ceded as the price of defence; and* (b) *States which at present enjoy a measure of immunity from the incidence of the Sea Customs tariff and the Salt tax?*

(ix) *Should the Federal Government have any control over Provincial borrowings? Should there be a Federal Loans Fund?*

(x) *Should Provincial Balances be kept with the Federal Government pending the establishment of a Reserve Bank?*

Preliminary Discussion.

Chairman: Your Highnesses and Gentlemen, We have now come to the question of Federal finance. It was not to be expected that at its first Session, the Conference would attempt to formulate any comprehensive scheme of Federal finance. Apart from the fact that this could only be done by an expert body, the main pre-occupation of the *Conference on the last occasion* was to settle provisionally the political foundations of Federation, and the financial aspect of the problem was only touched upon incidentally. The importance, however, of devising an equitable scheme of Federal finance can scarcely be exaggerated; for whatever form of constitution be decided upon, its success in actual working must largely depend upon two conditions: the first, that in the constitution the financial relations between the component parts of the Federation are precisely and wisely defined; and the second, that the aggregate resources, actual and potential, are quitably distributed, so that, if practicable, neither the Federal Government nor any of the Governors' Provinces will at the outset be unable to make ends meet.

I need not remind you that finance, at the present moment, is difficult for everybody, and one has to be extremely careful to do what is best in an exceptional emergency. This involves not only the formulation of financial provisions to be embodied in the constitution, but also an adjustment as between the Federal Government and the Units of the resources of the Federation.

I think you are wise to have decided that, in the first instance, after we have had a general debate upon the subject, this should be examined by the sub-Committee, whose recommendations you can review should you feel so disposed. With regard to that sub-Committee, I am very much obliged for the suggestions I have had with regard to it; but I want to say this, that of course any group and any individual is entitled to have his expert adviser there. It is a subject on which you must all have expert advisers, and you will be perfectly free to have anybody you like to advise you. To avoid misunderstanding, it should, at the outset, be made clear that the matters dealt with are not directly connected with the question of financial safeguards, but are rather matters of domestic concern, affecting the internal relations between the Federal Government and the Units of the Federation. Particularly, I would ask you to consider—and the sub-Committee when it is formed, to consider—this: whether we are to base the financial system upon the assumption that the Provinces are granted the greatest possible measure of self-government. I will repeat that, because it is very important: are we to base the financial system upon the assumption that the Provinces are granted the greatest possible measure of self-government?

Sir Provash Chunder Mitter: My Lord Chancellor, I consider it a great honour to be called upon to open the debate upon the important subject before us. Believe me when I say that I wish

the task had been entrusted to somebody abler and more experienced than I can claim to be. But when you asked me yesterday afternoon to take up this subject, I felt that it was incumbent upon me to accept this call of duty, however ill-equipped I might be, and however short the time at my disposal for the preparation of an important subject like this. I might add, My Lord, that a call from you was irresistible. You have taken so much interest, and, if I may say so, have devoted so much labour to solving this very difficult and intricate problem of federation of a type unknown to the world at present, but which I hope in the future will be known as one of the best types. But for your assistance, I am sure we would not have been able to make that progress on the political aspects of the problem which we have made; and I hope and trust, Sir, that with your assistance, we shall make similar progress on the financial aspects which are all-important.

The main head which is before us for discussion is the distribution of financial resources between the Federation and its Units. Keeping this main head before me, I shall try to confine my remarks to general questions which arise therefrom. I would, at this stage, make only general observations which seem to me to be necessary in order to focus our attention on the essential points. We are entering upon a Federation on certain specified subjects. The Units of Federation will be federated British India on the one hand, and a number of Indian States—and I hope all the Indian States—on the other. We have been authoritatively told by His Highness of Bikaner, as representing the Order of Indian Princes, that the Indian States are not willing to agree to the imposition of any "direct" taxation on their subjects. That is a very important point which we must constantly keep before us; and, in discussing the problems before us, we must not, therefore, be led into a too slavish imitation of other federal constitutions. As we are federating, we of British India and they of the Indian States must try to realise each other's difficulties, and must at the same time take note of the realities of the position.

The next matter to which I would draw the attention of the Committee is the list of Federal subjects set out at page 10 of the Report of the sub-Committee; and in this I may anticipate another point, namely, the position of the Federal Executive with regard to "Central" subjects, by referring to the lists set out at page 28. An examination of these lists will show that the administrative expenses of purely "Central" subjects are not much; but the purely "Central" subjects are subjects of the utmost importance to British India, because they concern items like civil law, criminal law, the penal code, and so on. The administrative expenses of the present Government of India are mostly to be handed over to the Federal Government and the Federal Legislature of the future. I say "mostly" because there are items which are not to be handed over.

It has been suggested that a suitable sub-Committee should be appointed to investigate the subject under discussion. I am of opinion that this is an eminently wise suggestion, as it will be necessary to investigate many facts and many figures before we can hope to come to a proper decision. In order that the sub-Committee may do its work properly, we are only concerned in this discussion in giving a sort of lead to it. We are not even called *upon to formulate the terms of reference*, but *simply* to discuss the matter amongst ourselves in order to show what is in our minds, so that the sub-Committee may work out the details on the lines and indications of the discussion which takes place here. Therefore I do not propose to enter too much into facts, or even into details, except at a later stage for the purpose of elucidating and explaining some of the suggestions I propose to make; and even there I do not think it will be right to go into many details.

There are two fundamental points which we must keep in view in deciding on the financial position of the future. One is that the Federal Government should have adequate and sufficient resources to discharge the duties cast upon it—and some of those duties are very important. The other is that, subject to the provision of such resources to the Federal Government for discharging the duties cast upon it, as much as possible should be set free to meet the requirements of the different Provincial Governments. The duties cast on the Provincial Governments are, in all conscience, of the utmost importance. On the adequate discharge of the duties and responsibilities cast on the Provincial Governments lies the future welfare of the teeming millions of India. Mahatma Gandhi told us the other day that ninety per cent. of the population live in 7 lakhs of villages. Unless those governments whose duty it is to improve the moral, the material, the educational and the economic position of these teeming millions are given adequate resources, self-government will be a mere mirage. It is for that reason I say that, subject to the essential needs of discharging the duties cast upon the Federal Government, every effort must be made—not because of any Provincial standpoint but because of the all-India standpoint—to leave as much of the resources as possible to the Provincial Governments. And may I add that, even from the mere mundane point of view of the Federal Government—even from the point of view of rupees, annas and pies—if the human unit in the Indian nation is economically stronger, then your Customs revenue will be larger. If the human unit in the Indian nation is better off, then the acute problem of the unemployment of the middle classes, and particularly the poorer middle classes, will be more easy of solution. Your Income-tax revenue will improve. Your buying power, generally speaking, will improve. Therefore, even from that point of view, do not forget to leave as much as you can to the Provincial Governments.

Now, Sir, I will refer to some general questions, which I may almost describe as questions of general principle; and I would say that we have to divide our problem into two parts—one, what I

may refer to as the intermediate period—because the Federal Government is going to take up many of the duties cast upon the present Government of India. The present Government of India has not only the sources of revenue which will be available to the Federal Government, but it has other sources of revenue which close examination will show ought not to be available to the Federal Government. In the intermediate period, however, some of the sources of revenue which are at the present moment available to the Government of India should, to a certain extent, be made available to the Federal Government. I refer specially to the question of Income-tax. On the question of Income-tax, Their Highnesses have made it abundantly clear that they are not willing to impose Income-tax on their States or on their subjects. Therefore that is a "direct" tax, which is available to the Government of India at the present moment, which, on *a priori* grounds, ought not to be available to the Federal Government unless all the federating Units are willing to impose a similar tax. There will be certain expenses. Those expenses we may not be able to meet fully merely from those heads of our existing resources which will be made Federal. Therefore, I suggest that, for this intermediate period, a portion of the Income-tax should be made available to the future Federal Government; but after the intermediate period is over, the Federal sources of revenue should be sources common to British India and to the Indian States, and there, I believe, I am on common ground with Their Highnesses.

I have said that there should be an intermediate period during which "direct" taxation from British India, in the shape of Income-tax, will be partly available. I am in favour of fixing a time limit to that intermediate period, or else there will be a tendency to look too much to that source—or else, if there be any mismanagement of the Federal subjects of administration, the true responsibility will not be cast on the Federal Government. And not only would I fix a time limit, but I would fix a limit in the shape of a percentage as to the extent of the Income-tax which will be available to the Federal Government during this intermediate period. In fixing this time limit, however, we should keep in view a point like our debt obligations, and should agree to pay a rateable share of our unproductive debt. After this time limit, no portion of the "Central" sources of revenue, such as Income-tax, should be available to the Federal Government, unless the Indian States at that period agree to some other source which will be an equivalent portion of what British India will directly contribute. For this intermediate period, I suggest that half of the total Income-tax will not be unfair, and the intermediate period I propose we should aim at making ten years. But these details can be better settled in the sub-Committee, and after investigation of figures and expenses.

In dealing with our discussions on the political aspect of the question, some of my colleagues have said that we should aim at

the future, when there will be no "Central" subjects or as few "Central" subjects as possible. I agree with that observation, but at the present moment we have "Central" subjects, including some "Central" subjects of the utmost importance to which I have referred. These "Central" subjects, however, are subjects which are mainly concerned with legislation, mainly concerned with laying down a certain standard of administration. They are not mainly concerned with large heads of expenditure. This fact seems to me to be important. Supposing all the Provinces agree to have a unified type of administration, say, with regard to Audit or with regard to the High Courts. I am expressing no opinion on the merits. I am referring to these two points merely for purposes of illustration. I know that at the present moment, the suggestion is that Audit would be a Provincial subject so far as the Provinces are concerned, but supposing that we in our wisdom—by "we" I mean the public of India, British and Indian—come to the conclusion that it may be a very desirable thing to make an Audit service quite independent of party politics, to make an Audit service whose duty it would be, not only to audit the Federal subjects, the "Central" subjects, but even Provincial subjects—it may be quite possible in those circumstances for the different Provinces to come to an arrangement with the Federal Government to pay a certain amount to the Federal Government, and then the Federal Government in its "Central" department will deal with Audit as a whole. Take another illustration, take the High Courts. Here also I do not want to suggest that the High Courts should be for all time "Central" subjects, nor do I want to suggest that the High Courts should be Provincial subjects. I am not concerned now with that aspect of the problem at all. But supposing we decide that the High Courts should be under the Centre. Well, the revenues of the High Courts are derived from Provincial sources. It may be quite possible to come to an understanding, between the Federal Executive dealing with the "Central" subjects and the Provincial Governments, that each Province will pay so much of the expense. Therefore, if we keep that in view, then many aspects of administration of "Central" subjects will disappear sooner than we anticipate; but, in that case, as the expense will be borne by the Provincial Governments, we should have an additional incentive for giving more resources to the Provincial Governments.

Now, Sir, I propose to give my provisional answers to the questions which you have given us for consideration under Head I, but I would like to safeguard myself by saying that these are purely provisional. I am at full liberty to change my views when I know more.

Sub-head (i) is this:—

> "Is there to be a 'Central' Budget distinct from the 'Federal' Budget?"

To that my provisional answer is that there should be one Budget, but that there should be a *pro forma* distinction between Federal

vinces on a suitable basis. This would be feasible; and by this method the conditions of the population in the Provinces would improve, and such an arrangement would react favourably on the "indirect" taxation left to the Federal Government. If, however, in emergencies more money is required by the Federal Government, some suitable method might be adopted under which, up to a definite limit, the Federal Government could call upon the federating Units to contribute—for example, a percentage of the Income-tax from the British Indian Provinces. What should be the line of contribution for the Indian States, when such an emergency arises, is a matter on which we should certainly defer to the views of Their Highnesses.

I suggest that the following heads of "indirect" taxes for the Federal Government should be considered. We have already the existing Customs duties. We have already the existing Salt duty. Additional sources like the following may be considered, such as an Excise duty on Matches. That is an "indirect" tax. How much it will bring in will be a matter for investigation. We have some provisional estimates in Sir Walter Layton's scheme, which have been rather severely criticised; but we shall now have to consider the possibilities under this head, not only from the point of view of British India as Sir Walter did, but of Indian India as well.

Sir Maneckjee Dadabhoy: Do you say that Excise should be for the Provincial Governments?

Sir Provash Chunder Mitter: No.

Sir Maneckjee Dadabhoy: It should be Federal?

Sir Provash Chunder Mitter: Yes. My submission is that Sir Walter Layton's suggestion might have been a useful one when there was no question of federating with the Indian States, but that, as Customs and Salt may not suffice for Federal expenditure, we have to think of other sources of Federal revenue. In view of certain points which I have already made, the aim should be to get "indirect" taxes for Federal sources; and one of the items of "indirect" taxation that I suggested is Excise duties on Matches, both in British India and in Indian India.

Then another source which may be worthy of serious investigation is Excise duty on Cigars, Cigarettes and pipe Tobacco. I am not referring to the chillum tobacco smoked in Indian style, but I am referring to the Western style of smoking—and many Indians have adopted this Western style. That may also be investigated as a possible source of Federal income. Then, a duty on private import of Silver. There may be various other suggestions, and better suggestions may be made by my colleagues; but as we are to keep in view the question of "indirect taxation" to which Their Highnesses may agree, and which at the same time may bring in a fair amount of revenue, we have to make our suggestions in view of those general considerations.

Then, Sir, the next item is item (v):—

> "To whom and for what purposes *are the proceeds* of Income-tax in British India to be credited?"

My answer is that, during the transition period—say for ten years—up to a limit of half the Income-tax may be made available for the Federal Government. *The rest of the Income-tax* during this period should be made available to the *British Indian Provinces*; and the whole of the Income-tax after the transition period should be made available to the British Indian Provinces. If the States refuse to raise taxes when they ought to be raised, the burden will fall *on* British India alone, unless you have a definite percentage. It *may* be *noticed in* this *connexion* that the only direct payment made by the Indian States is a *tribute* of 74 lakhs. Of *this, about* 5 lakhs is not really a tribute. As I claim that British India should be relieved from the payment of Income-tax, I, personally, would have no objection to relieving Indian India of the payment of tribute. I know in certain quarters strong opinions are held on the point, but I will deal with that later on.

Then the sixth item is this:—

> "To what extent, if at all, will Federation necessitate surrender, by federating States, of rights to raise revenue within *their territories, at any rate by* 'indirect' taxation—(*a*) *as regards existing taxes;* (*b*) *future taxes?*"

My answer is this. As regards existing taxes, I would aim at as little dislocation of the existing practice as is possible. No doubt, according to sound theoretical reasons, some existing taxes, such as *Customs levied from inland Customs barriers, either should be abolished or should accrue to the Federation. If we follow this* principle, it may be a perfectly sound principle; but questions of compensation may then arise and other important questions also may arise. All the States may not have similar Customs barriers; they may not be levying similar rates There are complicated questions, therefore, not only between British India and Indian India, but between the States *inter se.* The amount of revenue is not much and the population concerned also is not *much. Therefore the substance of the question of principle*—namely, that it may affect the revenues of the Federation as a whole—loses much of its strength. But I say the question may well be investigated by the sub-Committee; and, not only that, but I strongly urge that this question may be left till after the constitution is established. I am against beginning with points of irritation when we start the constitution. I am in favour of submitting in the beginning to present conditions, provided that it is definitely laid *down* that, in future, "*indirect*" taxes *should* not be *levied* without the concurrence of the Federal Legislature and the Federal Executive. In other words, as regards the existing state of things, I am willing—I may use a colloquialism—to wink at it: but as regards the future, it must be with the consent of the Federal Legislature and Federal Executive.

vinces on a suitable basis. This would be feasible; and by this method the conditions of the population in the Provinces would improve, and such an arrangement would react favourably on the "indirect" taxation left to the Federal Government. If, however, in emergencies more money is required by the Federal Government, some suitable method might be adopted under which, up to a definite limit, the Federal Government could call upon the federating Units to contribute—for example, a percentage of the Income-tax from the British Indian Provinces. What should be the line of contribution for the Indian States, when such an emergency arises, is a matter on which we should certainly defer to the views of Their Highnesses.

I suggest that the following heads of "indirect" taxes for the Federal Government should be considered. We have already the existing Customs duties. We have already the existing Salt duty. Additional sources like the following may be considered, such as an Excise duty on Matches. That is an "indirect" tax. How much it will bring in will be a matter for investigation. We have some provisional estimates in Sir Walter Layton's scheme, which have been rather severely criticised; but we shall now have to consider the possibilities under this head, not only from the point of view of British India as Sir Walter did, but of Indian India as well.

Sir Maneckjee Dadabhoy: Do you say that Excise should be for the Provincial Governments?

Sir Provash Chunder Mitter: No.

Sir Maneckjee Dadabhoy: It should be Federal?

Sir Provash Chunder Mitter: Yes. My submission is that Sir Walter Layton's suggestion might have been a useful one when there was no question of federating with the Indian States, but that, as Customs and Salt may not suffice for Federal expenditure, we have to think of other sources of Federal revenue. In view of certain points which I have already made, the aim should be to get "indirect" taxes for Federal sources; and one of the items of "indirect" taxation that I suggested is Excise duties on Matches, both in British India and in Indian India.

Then another source which may be worthy of serious investigation is Excise duty on Cigars, Cigarettes and pipe Tobacco. I am not referring to the chillum tobacco smoked in Indian style, but I am referring to the Western style of smoking—and many Indians have adopted this Western style. That may also be investigated as a possible source of Federal income. Then, a duty on private import of Silver. There may be various other suggestions, and better suggestions may be made by my colleagues; but as we are to keep in view the question of "indirect taxation" to which Their Highnesses may agree, and which at the same time may bring in a fair amount of revenue, we have to make our suggestions in view of those general considerations.

Then, Sir, the next item is item (v):—

> "To whom and for what purposes are the proceeds of Income-tax in British India to be credited?"

My answer is that, during the transition period—say for ten years—up to a limit of half the Income-tax may be made available for the Federal Government. The rest of the Income-tax during this period should be made available to the British Indian Provinces; and the whole of the Income-tax after the transition period should be made available to the British Indian Provinces. If the States refuse to raise taxes when they ought to be raised, the burden will fall on British India alone, unless you have a definite percentage. It may be noticed in this connexion that the only direct payment made by the Indian States is a tribute of 74 lakhs. Of this, about 5 lakhs is not really a tribute. As I claim that British India should be relieved from the payment of Income-tax, I, personally, would have no objection to relieving Indian India of the payment of tribute. I know in certain quarters strong opinions are held on the point, but I will deal with that later on.

Then the sixth item is this:—

> "To what extent, if at all, will Federation necessitate surrender, by federating States, of rights to raise revenue within their territories, at any rate by 'indirect' taxation—(a) as regards existing taxes; (b) future taxes?"

My answer is this. As regards existing taxes, I would aim at as little dislocation of the existing practice as is possible. No doubt, according to sound theoretical reasons, some existing taxes, such as Customs levied from inland Customs barriers, either should be abolished or should accrue to the Federation. If we follow this principle, it may be a perfectly sound principle; but questions of compensation may then arise and other important questions also may arise. All the States may not have similar Customs barriers; they may not be levying similar rates. There are complicated questions, therefore, not only between British India and Indian India, but between the States *inter se*. The amount of revenue is not much and the population concerned also is not much. Therefore the substance of the question of principle—namely, that it may affect the revenues of the Federation as a whole—loses much of its strength. But I say the question may well be investigated by the sub-Committee; and, not only that, but I strongly urge that this question may be left till after the constitution is established. I am against beginning with points of irritation when we start the constitution. I am in favour of submitting in the beginning to present conditions, provided that it is definitely laid down that, in future, "indirect" taxes should not be levied without the concurrence of the Federal Legislature and the Federal Executive. In other words, as regards the existing state of things, I am willing—if I may use a colloquialism—to wink at it; but as regards the future, it must be with the consent of the Federal Legislature and the Federal Executive.

My answer is that the Federal Government should have control only for the purpose of co-ordinating borrowing, with regard to rates of interest, with due regard to the security offered. One Provincial Government may offer a better security and there is no reason why that Provincial Government should not be allowed to borrow money at a lower rate of interest; but there should not be any undue competition either between the different Units of the Federation or between the Federal Government and a Unit. It is for that reason that power should be reserved for co-ordination. As to whether there should be a separate Loans Fund, my answer would depend largely upon the attitude of the Indian Princes. If they desire to participate in a Loans Fund, then questions referring to internal administration may naturally arise, and I do not know whether they would like that. *After I have heard the views of Their Highnesses about a separate Loans Fund, and whether they desire such Loans Fund for the Indian States as well, I shall be in a better position to discuss this question.*

Then, lastly, the tenth question is this:—

> "Should Provincial Balances be kept with the Federal Government pending the establishment of a Reserve Bank?"

My answer is "Yes." If the Indian States agree so to keep their balances as well, they may do so; but possibly they will not agree to keeping their balances with the Federal Government. The British Indian Provinces may, up to a limit, keep their balances with the Federal Government; but the rate of interest paid to them should not be inadequate, and in no case should be less than 1 per cent. below the borrowing rate of the Federal Government. At the present moment what is allowed is very much lower than that.

Now, Sir, I desire to say a few words in support of the opinions that I have expressed, but I do not desire to be long.

On the question as to what would be the needs on the revenue side of the Federal Government, the item of expenditure which looms largest is that of Defence. If you turn to page 10 of the document which has been prepared by the Government of India, you will find that the item for Military expenditure is 52 crores. It would appear from the illustrative Budget on the same page that Customs revenue in the year 1931-32 is estimated to be 55 crores, and the Salt revenue is estimated to be 7 crores. *Therefore the* total will be more than 62 crores. As regards Defence, other points may have to be considered, namely, whether there can be *any reduction of expenditure—whether capitation charges should not bring us in something and also whether, in view of the services* which are *rendered for* Imperial purposes, we *are not entitled to* something. However, these are questions *foreign to our present* purpose. I only mention them to show the *possibilities of the position.* This illustrative Budget, however, merely gives an idea, and even on that idea the income from the two existing heads of Customs and Salt is far in excess of the main item of Military expenditure. Therefore it would be a matter for the sub-Commit-

tee, which you are going to set up, to go into the question more carefully. Defence is not the only item. There are other items. If the income now derived from the two heads of Customs and Salt is not enough, it will be for the sub-Committee to consider what other sources are possible. Lastly, as I have suggested, it may be necessary that a portion of the British Indian Income-tax should be made available to meet contingencies, provided Their Highnesses also agree, after the transition period, to make some "direct" source available. But, for the intermediate period, a portion of the Income-tax will be made available.

With regard to Income-tax, the right-hand column of the illustrative Budget on page 10 gives us an idea. "Gross collection, 16·45 crores." According to the illustrative Budget, they suggest a contribution to the Federal fund of 12·13 crores, and a contribution to the Provincial fund of 3·89. They want to appropriate, according to the figure just above, 12·13 for their purpose. The total income there is 16·45. The total income, India 1928-29, was 16·60. That is, roughly speaking, something like the estimated total income. This has an intimate connection with the question of debt charges, and what I want to say I will say in that connection. Page 5 of the Government of India's document summarises the total debts. The total amount of debt, as you will find from paragraph 10 on page 5, is Rs. 1,17,357·70 lakhs. Out of that 1,00,120 is productive, or payable out of its own resources. Therefore, only 172 crores is supposed to be non-productive, and, according to the Simon Commission's Report, Vol. 1, page 162, practically the whole of this is War Debt. I have already made my suggestions about that. It is for payment of this 172 crores of the non-productive debt that some portion of the Income-tax may be necessary; but if we work out the figures, and if we proceed on the basis that the Federal section of the income should pay its quota, then I submit that the calculation will be somewhat different from the calculation set out in the illustrative Budget. I will not go into details, however. Then I submit it would be quite possible to earmark at least half of the total Income-tax for the benefit of the Provinces; and I further submit that a 10 years' period ought to be enough, because as soon as this unproductive debt has been paid off or substantially diminished, then there is no occasion for continuing this difference—a difference which is bound to give rise to complications.

I have already referred to the position of the Areas Centrally-administered. I will only refer to page 7 of this document prepared by the Government of India. They deal with the matter on page 7, paragraph 16, in which members will find that the total expenditure is 409 and the total revenue is 214, so that the net loss is 195 lakhs. This does not take into account the portion of the Income-tax which will be available to them, or the question of separation of the North-West Frontier Province. My main point is that the total amount which is to be payable for this is compara-

tively small. There are also *sources of revenue in these* Centrally-administered Areas, and these sources are also progressive. We have everything to gain if we make this a Federal subject and not a "Central" subject.

My next head is a further reference to the allocation of debt charges. In paragraph 4 of the paper which was prepared at the instance of Your Lordship, it is stated:—

> "*Another difficulty in the way of amalgamation* arises in respect of the Public Debt. It is, however, suggested that the assumption by the Federation of responsibility for the *existing debt would not prejudice the interests of the* States and would involve no new obligation on State revenues. The debt is now charged on the 'revenues of India,' and these, under section 20 (3) of the Government of India Act, include 'all the territorial and other revenues of or arising in British India.' As matters stand, therefore, State revenues form no part of the security, and it is desirable to *make it clear that there is no intention of charging* existing or future debts on these revenues. This could be done by defining in the new Constitution the 'revenues of India,' on which the existing debt would be charged, as including the revenues of the Federation as well as the revenues of British India."

Now, on the question of debt generally, there is first of all the particular point—namely, the position *vis-a-vis* our creditors. As regards our creditors, they have undoubtedly the right to every rupee of the revenue or of the assets on which they lent the money. Therefore, after they are protected, another question arises *vis-a-vis* ourselves—*inter se* between Federal and "Central"—*inter se* between British India and the Indian States. As regards that, it would be a just and fair thing if we both proceeded on the basis that neither Indian India nor British India is paying any "direct" taxes; but inasmuch as Federal India is taking over the administration *of the past, we ought to be willing to contribute a portion* only of the "direct" taxes for the intermediate period. And, speaking for myself, I am willing to give up the contribution of 74 lakhs from the India States. Why? Because it is not a common contribution between the different States of India. That is one reason. Some States pay more, some States pay less; and also it is a negligible amount. Also it is not a tax; and also because, *in future, if the exigencies of the situation demand it*—if it is necessary to have "direct" taxation—I want, if need be in future, that "direct" taxation should be an open, direct taxation both for British India and for Indian India. *Therefore* let us start with a *clean slate*. You *on* your side should agree to our getting half the Income-tax revenue. Strictly, the Federation has no right even to the half which I am willing to contribute for the first ten years—*no right* whatsoever; but we both want to *look to* each other's difficulties. You of the Indian States, looking to the

sources of taxation, and if the aim of the future be to get rid of Central administrative expenditure—I am not referring to "Central" subjects because there must be a number of "Central" subjects for all time, but I am referring to Central administration more than to "Central" subjects. Having "Central" subjects for the purpose of some kind of co-ordination is a different matter; but for purposes of administration it is easy to get rid of the "Central" subjects. In fact there are very few "Central" administrative subjects if you go through the list carefully. As we aim at getting rid of "Central" administrative subjects, then the "direct" taxes must be by the Provinces; but, as I have already indicated, some types of "direct" taxes can be only conveniently and justly raised by a grouping of the Provinces in British India. Whether you will give up any portion to India as a whole is a separate problem, but logically that is the only position possible.

There is another point to which I think it right to draw your attention. You will find in the Reports two lists. One is a list of the Federal subjects. The other is a list prepared by a joint sub-Committee, under the presidency of the Marquess of Zetland, in which certain subjects are referred to as purely Federal, certain ones as partly Federal and partly "Central," and certain ones as Provincial. I speak subject to correction, but, so far as I am aware, after this list was submitted it was never properly scrutinised and examined by the Federal Structure sub-Committee. On going through the list, I find that there are some slight discrepancies. It would be desirable to examine these discrepancies in order to come to definite decisions with a view to getting rid of them.

Chairman: Do you propose to do that now, or is that for the sub-Committee?

Sir Provash Chunder Mitter: I am referring to the point only. It is not convenient to go through so many items here. I am referring to the point so that it may not escape attention.

In the Memorandum of the Government of India there is a reference to present-day economic difficulties. Although the Government of India has said that, perhaps those difficulties will disappear, they very rightly point out that there are those difficulties. We are framing a constitution for the future, but we cannot ignore the present. There are those difficulties. What is the remedy? Can we, in our constitutional discussions, find any remedy? My answer is a most emphatic "No." Unless you can remove the conditions which are the root cause of these difficulties—as the Government of India warns us—an examination of the present difficulties will only lead us into further difficulties; but, if there are those difficulties, meet them by all means by any constitutional method by allotting a little less of Income-tax or a little more of Customs to meet them. As the subject has been referred to in the Memorandum, may I express my humble opinion that

you in this country also are very much concerned with these difficulties. Unless we can find a solution, in three years' time there will be disruption of society in India. I speak after weighing every word. I have reason to know the position in my Province. I have inside as well as outside information. You cannot solve it unless you solve it from the point of view of world economy. As that point has been referred to, ignore it for our present purposes; but for heaven's sake do not ignore it entirely. If we do, we are framing a constitution for something which will never come to light.

I have a few words to say about the Provinces. Naturally my thought turns to my Province, but I know that this is an all-India Committee, and it is not concerned with individual Provinces; but there is an all-India aspect common to my Province, to the Province of my friend, Sir Sultan Ahmed, and also to Assam, these three representing more than one-third of the total population of British India. I know that our British Indian leaders approach all these questions from an all-India national point of view. As I have that confidence, I am sure that they will approach it from that all-India national point of view; but even if it were my Province only, and not these other two Provinces, mine is a very big Province, and it is a part of British India, and the British Indian leaders cannot afford to ignore it. Repercussions of the difficulties in my Province are unhappily to be found in other Provinces. There is one aspect of the problem with which men outside these three Provinces are not very familiar. That aspect is that the normal development of activities has been stopped for a number of years in these Provinces. The facts are well known, but the conclusions are not so well known. It is well known to all of us in this room that, in 1905, there was a partition of Bengal into two Provinces. In those days, petty little schemes had to come up before the Secretary of State for sanction. Therefore the two Provinces, which were then constituted Provinces, could not really start their work until about 1908 or the beginning of 1909. In 1911 came the re-partition. Then the same old process was repeated in 1913. In 1914 came the war and everything was stopped. In 1921 came the deficit of over two crores in my Province and a deficit in the other two Provinces. If you take, for example, primary education, there is not a single Province in India where, for primary education, the Government were spending in 1920 less than 4 to 5 rupees per head. In Bombay it was 14 rupees; whereas in 1920 our Government was spending only just over 1 rupee 14 annas per head. What is the reason? You cannot ascribe it to a difference in attitude between the I.C.S. officers and the educational officers in Bengal, and the I.C.S. officers or the educational officers in other Provinces. The real reason is that the two partitions and re-partitions stopped normal expansion. It is the same in public health and the same in other things. I will not go into details.

Dr. Shafa'at Ahmad Khan: What about permanent settlement?

Sir Provash Chunder Mitter: If you want to go to the permanent settlement point, I will show how India has benefited and not we. At the present moment, we pay far more in Income-tax than Madras or the United Provinces, because of the permanent settlement; we pay far more in Customs duties because of the permanent settlement.

Dr. Shafa'at Ahmad Khan: Because of the permanent settlement?

Sir Provash Chunder Mitter. Yes. Do not run away with preconceived notions. If you want to go into the question of permanent settlement, I am prepared to go into it. Appoint a committee of 5 just men. I do not want anyone from my Province. My facts are so strong that I am sure they will be convinced.

Mr. Zafrullah Khan: If you are suffering so much from the permanent settlement—

Sir Provash Chunder Mitter: I am not suffering from the permanent settlement at all; that is a mistake. If you get rid of the permanent settlement, you will not get 30 lakhs more of revenue.

Sir Maneckjee Dadabhoy: Yes, but you cannot have it both ways.

Sir Provash Chunder Mitter: We do not want it both ways. Do not run away with preconceived notions. We are contributing more than any other Province to the Indian Exchequer. Take Land revenue in Bengal and in Madras. In Madras the total Land revenue is about 6 crores and more than 2 crores are spent in realising it. Our total revenue is 3 crores 25 lakhs, and we spend less than 20 lakhs in realising it.

Mr. Iyengar: The percentage of the cost of collection of Land revenue is 2 per cent.

Sir Provash Chunder Mitter: It may be; but what is the expenditure in collection?

Mr. Iyengar: That is what I say.

Sir Provash Chunder Mitter: I am quite ready to go into that figure; but, assuming your preconceived notion about permanent settlement is right, is not that a part of the position in Bengal? If that is part of the position in Bengal—if you want us to have additional taxation—are you willing to pay additional taxes yourself? If we want to get rid of permanent settlement, we shall get rid of it for our benefit; but why should you get rid of it for the benefit of other Provinces? Believe me, you are absolutely wrong. When Sir John Simon went into the matter, he was satisfied that these preconceived notions did not represent the true state of affairs. It is a very big subject; you may have your own view. My complaint is, that you pretend to be all-India leaders, but you

think that Bengal is not part of India. Go into that matter by all means.

Sir, they have taken me away from my line of argument by this irrelevant interruption, if I may say so with the utmost respect. Now, Sir, my point is this, that in these three Provinces our normal expansion of expenditure, and particularly in the "nation building" departments, was stopped.

Sir Maneckjee Dadabhoy: It was stopped, as far as I know, in all the Provinces.

Sir Provash Chunder Mitter: It is perfectly true that all the Provinces stopped during the war; but I must have been very dense if I did not make myself clear, in stating my case, when I referred to the fact that, on account of two changes of Government, the expansion possible in the ordinary course could not take place. However, I will not refer to that any more. But, Sir, if on account of these two changes the normal expansion was stopped, that is an additional difficulty, and that additional difficulty should be taken into consideration. I do not for a moment say that, because of that additional difficulty, you should pay me more than you pay to the other Provinces. What I do say is, that the position in these three Provinces, and particularly in my Province, is such that, unless some relief is available, the situation will be very serious. Never mind how you settle the fate of India. Never mind what constitutional changes you make. So far as my Province is concerned my Province will not be able to participate in those benefits. That is an aspect which I put before you. If others desire to consider the question and to go into it, I am at their service.

Mr. Iyengar: My Lord, The Lord Chancellor introduced this important Head for discussion with a collection of papers which, as has been suggested, rightly require examination and discussion in a smaller Committee, and I cordially endorse that suggestion. Indeed, it is my hope that, if the financial problems of the Federal Structure are solved so as to be just and equitable to all the interests involved—as the Lord Chancellor very rightly observed—solutions of many of the political problems of Federal Structure will be immensely facilitated and the inner Committees' discussions will be wholly fruitful in this respect. As you have desired that our observations at this stage should be more or less general, you will permit me to postpone any categorical answers to the points which have been put down, and to place before the Committee certain general lines of discussion and investigation in the sub-Committee, and the general principles that have to be followed in dealing with them. Before doing so, I would, in as few words as possible, elucidate what, in my view, are the constitutional implications of the change from Central finance, as now organised, to Federal finance, as we would have to organise it under the Indian Commonwealth.

Under Section 20 of the *Government of India Act*:—

> "(1) The revenues of India shall be received for and in the name of His Majesty, and shall, subject to the provisions of this Act, be applied for the purposes of the government of India alone."

Section 21 of the *Government of India Act* then recites:—

> "Subject to the provisions of this Act and rules made thereunder, the expenditure of the revenues of India, both in British India and elsewhere, shall be subject to the control of the Secretary of State in Council and"—this is important—"no grant or appropriation of any part of those revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858, or this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council of India."

I may remind the Committee, My Lord, that a proviso was added on account of certain doubts, entertained in legal circles some years ago, as to the validity of the authority given by the Secretary of State to the Government of India. The proviso runs as follows:—

> "Provided that a grant of appropriation made in accordance with the provisions or restrictions prescribed by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council shall be deemed to be made with the concurrence of a majority of such votes."

That means, in other words, that the actual appropriations made by the Governor General or by the Local Governments shall be deemed to have been made by the Secretary of State in Council. The legal effects of these provisions relating to the proceedings of the Council of India, My Lord, were much debated on a famous occasion in the House of Lords; but the doctrine of Cabinet responsibility of the Secretary of State in London has sufficed to put the Council of India out of action where British interests are involved.

Every financial power, therefore, exercised by the authorities in India is thus a delegated one, and the control of the Secretary of State in Council in financial matters is fairly complete. Though the actual transactions and powers in the hands of the Governor General in Council are wide and large, they are derived from a clause in the Statutory Rule, now in operation, which provides that all monies derived from the revenues of the Government of India, or otherwise, by the Indian Government, are paid into the public account of which the Governor General in Council is the custodian, and out of which he is authorised to make grants or appropriations in accordance with the provisions or restrictions

think that Bengal is not part of India. Go into that matter by all means.

Sir, they have taken me away from my line of argument by this irrelevant interruption, if I may say so with the utmost respect. Now, Sir, my point is this, that in these three Provinces our normal expansion of expenditure, and particularly in the "nation building" departments, was stopped.

Sir Maneckjee Dadabhoy: It was stopped, as far as I know, in all the Provinces.

Sir Provash Chunder Mitter: It is perfectly true that all the Provinces stopped during the war; but I must have been very dense if I did not make myself clear, in stating my case, when I referred to the fact that, on account of two changes of Government, the expansion possible in the ordinary course could not take place. However, I will not refer to that any more. But, Sir, if on account of these two changes the normal expansion was stopped, that is an additional difficulty, and that additional difficulty should be taken into consideration. I do not for a moment say that, because of that additional difficulty, you should pay me more than you pay to the other Provinces. What I do say is, that the position in these three Provinces, and particularly in my Province, is such that, unless some relief is available, the situation will be very serious. Never mind how you settle the fate of India. Never mind what constitutional changes you make. So far as my Province is concerned my Province will not be able to participate in those benefits. That is an aspect which I put before you. If others desire to consider the question and to go into it, I am at their service.

Mr. Iyengar: My Lord, The Lord Chancellor introduced this important Head for discussion with a collection of papers which, as has been suggested, rightly require examination and discussion in a smaller Committee, and I cordially endorse that suggestion. Indeed, it is my hope that, if the financial problems of the Federal Structure are solved so as to be just and equitable to all the interests involved—as the Lord Chancellor very rightly observed—solutions of many of the political problems of Federal Structure will be immensely facilitated and the inner Committees' discussions will be wholly fruitful in this respect. As you have desired that our observations at this stage should be more or less general, you will permit me to postpone any categorical answers to the points which have been put down, and to place before the Committee certain general lines of discussion and investigation in the sub-Committee, and the general principles that have to be followed in dealing with them. Before doing so, I would, in as few words as possible, elucidate what, in my view, are the constitutional implications of the change from Central finance, as now organised, to Federal finance, as we would have to organise it under the Indian Commonwealth.

rely for our information on the invaluable Memoranda given to
and other official documents.

I do not propose to say much at this stage on the first categor
The actual liabilities as classified are put at 1,001 crores covered b
assets—including Railways and other commercialised and other pr
ductive assets—and of about 172 crores unproductive or, as yo
would call it, dead-weight debt. This latter debt is covered by
sinking fund, and is thus a diminishing liability, as will be also
pensionary and superannuation charges in respect of past servants
of the Government which we have to meet. As I shall have occa-
sion, later on, to deal with the general policy to be followed
regarding the sinking fund provision made in the Indian Budget for
productive as well as unproductive debt, I need only say that I
agree with the proposal now made, in the official note circulated to
us, that the tentative decisions arrived at by the Federal Structure
sub-Committee on the last occasion in regard to the existing debts
and assets should be modified. I agree that the only right course
to take—and it is certainly to the advantage of all the Units includ-
ing the States—is that the asset-covered part of the debts should
be federalised, especially as they are provided with ample reserves
and sinking funds, including Railways and other capital accounts.

As regards the 170 crores uncovered by assets, that remains a
charge on the general ordinary revenues of India, and this is also
covered by an ample sinking fund which will soon extinguish it. I
agree that this burden should be settled equitably between the States
and British India; but I would demand that a detailed scrutiny
of all the items should be undertaken.

My friend Sir Provash Chunder Mitter, in his detailed facts and
figures, pointed out that there are items—for instance that connected
with the War Debt of the Indian Government—in which we can cer-
tainly examine the claim that the Indian States also should parti-
cipate in that liability when we make a Federal Constitution. I
may give another instance in that connection. Some part of this
debt, I believe, is in respect of operations on the Frontier. Now,
as Defence is going to be a Federal subject, the question whether
the expenditure which has been incurred out of debt for these Fron-
tier operations immediately after the War should not also be shared
by the Indian States is, I submit, a matter which requires examina-
tion. On the whole, however, I do not expect that the allocation
of the existing Public Debt, as between the Federation and the
Indian States, will present any great difficulty to those who will be
charged with this examination. Similarly, the question of the
redistribution of Central and Provincial sources of revenue can be
discussed in the sub-Committee.

Concerning the allocation of revenues and expenditure, it is, of
course, clear that the triple classification of services and subjects as
Federal, Central, Indian and Provincial, is not exactly reproduced
in the financial classification of resources and expenditure. On the
other hand, as the Lord Chancellor's Note points out, even the pro-
posal of the Goverment of India—that there should

prescribed by the Secretary of State in Council. The Secretary of State in Council is thus, under the present constitution, a corporate person capable of sueing and of being sued, and it is this corporate personality of the India Office that should necessarily be brought to an end by the creation of the Federal Government for all India.

The British Indian revenues to-day, moreover, comprehend the Central and Provincial revenues; and the first step in the process, therefore, is to separate the balances and finances of both, and to vest the former in the Federal, the latter in the Provincial, auhority. The Government of India's Ways and Means operations have also comprehended all these and other funds and reserves relating to Currency and Remittance transactions. They have also been acting as the bankers of the Provincial Governments, and, through the Auditor-General, as their auditing authority. I do not want to go into these details, except to emphasise that both the Indian States and the British Indian Delegates should clearly visualise the need for immediately altering the constitutional status of the Government of India. They should also perceive the need for readjusting Provincial finance in regard to Central finance, so as to put them both in accord with the scheme of federation.

I would, as a mere illustration, put the future position of the Federal Government in finance thus:—

> "All revenues of India, from whatever source arising, shall be received for and in the name of the Commonwealth and shall, subject to the provisions of this constitution, be applied for the purposes of the Government of the Commonwealth in the manner hereinafter provided.
>
> The revenues of the Commonwealth shall be paid into the Public Account, of which the Governor General is the custodian, and credited to the Government of the Commonwealth. The Governor General shall, on the advice of his Cabinet, have power to prescribe by general or special order the procedure to be followed in the payments of money into, or in the withdrawal, transfer and disbursement of monies from the Public Account, and for the custody of monies standing in the account."

In taking over the financial functions of the Government of India and of the Secretary of State in Council, the Federal Government and the Provincial Governments have to be separately vested. I do not refer to the State Governments, for the present, for there has been no constitutional or legal vesting of the State revenues or obligations, though I am aware that in many States there has been a great deal of indirect pressure and influence in respect of direct expenditure. The Federal Government and the Provincial Governments have to make adjustments of assets and liabilities as well as of resources and reserves on the one side, and of charges and expenditure on the other. It is for these matters that we have to

" direct " tax is exactly the same as intended is as difficult to settle as that of a particular " indirect " tax. A " direct " Income-tax on Corporations and Companies may hit but few people, or millions, as the case may be. Again, a tax on consumption of articles of strictly limited use, such as particular luxuries, can always be levied with direct incidence on the persons that may be affected. It is the financial and political necessities of the commonwealth or the government concerned, and the pursuit of that equality and equity of taxation, which financiers seek so fondly to realise, that should ultimately guide the decision on the matter; and I would appeal to the representatives of the Indian States and British India alike not to tie themselves down by any hard and fast rule or preconceived notions as to future requirements and developments that we can hardly foresee to-day.

In Switzerland, the obstacles and restrictions on the Federal Government against the imposition of " direct " taxation actually broke down under the weight of heavy expenditure during the war period, and it was found much more effective and just, formally to amend the Constitution—to levy Income-tax and other " direct " taxes—than to call upon part governments or Cantons to pay the contributions they were liable to make for the purposes of the Federal Government in emergencies. Germany started with a restriction against " direct " taxation, and has ended by placing unlimited financial powers in the hands of the Federal Government. In the United States also the power to levy Income-tax was formally adopted as the Sixteenth Amendment of the Constitution in 1913, and it now yields two-thirds of its total revenue. I need not recite other examples. Circumstances have forced all the federations to levy " direct " taxes, and I think it is our business to profit by the experience of federations, particularly in financial matters.

There is one other matter in this connection, My Lord, to which I would just make one reference, lest I should be considered to have omitted it; and that is in regard to the distribution of Federal and Provincial or State resources, and the question where the residuary powers of taxation reside. All that I can now say is that I hold very strong views on this question of residuary powers, whether it be in the field of legislation or of taxation. I think that a good deal of misconception, a good deal of confusion of thought and language has prevailed in the discussions, which I have had the pleasure to peruse, which took place during the last sitting of the Federal Structure Committee. I feel that this question, if examined horoughly, would be found to be of more or less academic importnce. I therefore think that the subsidiary Note which has been repared for our use by the Government, which deals with this uestion, lays down all the considerations which should govern us deciding on this matter. This Note, in paragraph 40 of the cond Memorandum, refers to the question of what is the extent control which the Federal Constitution should exercise over taxle resources throughout the country—that is, within the states ncerned—and it has given certain general rules which may be

Federal Budget, with a *pro forma* distinction made between Federal and "Central" charges and a British Indian Income-tax to meet the latter and finance the Provinces with subventions—might well yield place to a scheme in which the distinction between "Central" and Federal finance should be broken down definitely. I will read that passage, because I consider it raises the general question of principle. The Note says:—

> "It may be asked why, having gone so far, we should not go a step further and break down completely the distinction between Federal and "Central" finance? If this could be done, and if amalgamation could be effected without prejudicing the interests of any member of the Federation, not only would there be an immense gain in simplification, but important political results might follow. The Federation would stand for India, and a possible source of friction in the future between British India and the States would be removed, for so long as the distinction between Federal and "Central" receipts remains, a conflict of interests is bound to arise when it becomes a question of imposing additional taxation or of reducing existing taxation. Further, so long as there is a distinction between Federal and "Central" finance it would, in practice, scarcely be possible for a State subject to become Finance Minister."

That is a matter in which, I am sure, we would be able to obtain the sympathy of the Delegates of the Indian States.

It seems to me, in discussing particular proposals or principles of Federal finance, we are too apt to forget that financial-like economic doctrines are relative. The doctrine, for instance, that the Federal Government should depend entirely upon "indirect" taxation, and States' Governments should have full and exclusive control upon all "'direct" taxation, is one that has important qualifications both from point of view of theory and experience and practical results. The nature of the services to be performed, and the charges on the revenue realised, have to be considered. A common assumption is that the revenue from Customs should cover expenditure on Defence and other external expenditure. The fallacy of this cannot be better illustrated than by contemplating the effect of allocating the present Customs revenue of the Indian Government for the entire Military expenditure of India, as the shortage in Customs revenue, which has been produced by the present financial crisis, is so serious that it is simply impossible to maintain the doctrine that Customs duty should cover even Military expenditure alone. Indeed, I should have preferred to premise all I have to say on this subject by the proviso that they are entirely hypothetical, and they proceed on the assumption that the normal conditions established in due course would approximate to the state of things that existed two or three years ago.

In the next place, the incidence of taxation is, and has always been, a difficult problem; and whether the incidence of a particular

" direct " tax is exactly the same as intended is as difficult to settle as that of a particular " indirect " tax. A " direct " Income-tax on Corporations and Companies may hit but few people, or millions, as the case may be. Again, a tax on consumption of articles of strictly limited use, such as particular luxuries, can always be levied with direct incidence on the persons that may be affected. It is the financial and political necessities of the commonwealth or the government concerned, and the pursuit of that equality and equity of taxation, which financiers seek so fondly to realise, that should ultimately guide the decision on the matter; and I would appeal to the representatives of the Indian States and British India alike not to tie themselves down by any hard and fast rule or preconceived notions as to future requirements and developments that we can hardly foresee to-day.

In Switzerland, the obstacles and restrictions on the Federal Government against the imposition ot " direct " taxation actually broke down under the weight of heavy expenditure during the war period, and it was found much more effective and just, formally to amend the Constitution—to levy Income-tax and other " direct " taxes—than to call upon part governments or Cantons to pay the contributions they were liable to make for the purposes of the Federal Government in emergencies. Germany started with a restriction against " direct " taxation, and has ended by placing unlimited *financial powers in the hands of the Federal Government.* In the United States also the power to levy Income-tax was formally adopted as the Sixteenth Amendment of the Constitution in 1913, and it now yields two-thirds of its total revenue. I need not recite other examples. Circumstances have forced all the federations to levy " direct " taxes, and I think it is our business to profit by the experience of federations, particularly in financial matters.

There is one other matter in this connection, My Lord, to which I would just make one reference, lest I should be considered to have omitted it; and that is in regard to the distribution of Federal and Provincial or State resources, and the question where the residuary powers of taxation reside. All that I can now say is that I hold very strong views on this question of residuary powers, whether it be in the field of legislation or of taxation. I think that a good deal of misconception, a good deal of confusion of thought and language has prevailed in the discussions, which I have had the pleasure to peruse, which took place during the last sitting of the Federal Structure Committee. I feel that this question, if examined thoroughly, would be found to be of more or less academic importance. I therefore think that the subsidiary Note which has been prepared for our use by the Government, which deals with this question, lays down all the considerations which should govern us in deciding on this matter. This Note, in paragraph 40 of the second Memorandum, refers to the question of what is the extent of control which the Federal Constitution should exercise over taxable resources throughout the country—that is, within the states concerned—and it has given certain general rules which may be

imposed. I therefore would, in dealing with it, without laying down hard and fast rules, put down one or two general principles and just say one or two words on that. The principles that I would adopt are that there should be no internal trade barriers—

Sir Maneckjee Dadabhoy: Excuse me one minute—internal trade barriers between Province and Province, or between the States and the Provinces?

Mr. Iyengar: Between all the Units of the Federation, of course.

Mr. Sastri: Would you admit the principle that compensation should be made wherever there exists such?

Mr. Iyengar: No; the question whether we should make compensation where there is an existing resource, of course, has to be considered, as also whether other resources can be set apart in substitution for it. There will be other sources out of which these States can recoup themselves, and there will be other means of taxation besides internal Customs barriers.

Mr. Joshi: May I ask whether you include octrois?

Mr. Iyengar: Yes, of course. They are all referred to, you will find, Mr. Joshi, in the Note of the Finance Department—octroi, excise and internal Customs and so on.

Sir Provash Chunder Mitter: I know, but it is not mentioned there that the municipal authorities will abolish their octrois.

Mr. Iyengar: I think it is most mischievous to have octrois. One of the fundamental concepts involved in a federation as it is understood by all constitutionalists, is the securing of equality in fiscal matters as between the states. Indeed, next to national defence, the principal motive for the formation of federations in the past, and at present also, I believe, has been the desire to establish those conditions that are essential for the free development of trade, industry and commerce throughout the whole of the federating units. I was glad, therefore, when His Highness The Maharaja of Bikaner definitely declared in the course of his speech on Tuesday, on Head 3, that there should be no discrimination against the States and their subjects in regard to taxation or any other matter—a point on which I venture to think all will be agreed. Therefore, while it would be improper for the Federal Government or the Indian Provincial Governments to impose discriminatory taxation against the States and their subjects, it follows equally, I take it, that it would be improper for the States to impose discriminatory taxation of any kind against British Indian subjects, and that the removal of internal tariff walls must be an essential feature in an all-India Federation.

Sir Akbar Hydari: Would you call this discriminatory internal taxation? If everything which is imported, whether by a British Indian subject or whether by a Hyderabad State subject, is subjected to a Customs duty, would you call that a discriminatory taxation?

Mr. Iyengar: No; if all goods consumed, whether by Indian State subjects or whether by British subjects, were subject to a common outside Federal tax, there could be no discrimination in it.

Mr. Joshi: That is not what Sir Akbar is putting to you.

Mr. Iyengar. Would it be discriminating if you imposed a Customs duty not only upon the Hyderabad State resident but also upon a British resident? No. British residents, when they reside there, take, if I may say so, a temporary domicile in Hyderabad.

Mr. Sastri: You mean that would be contrary to your previous definition.

Mr. Zafrullah Khan: Will not that be a trade barrier, according to you?

Mr. Iyengar: Yes. There are other important questions which arise in the reconstruction of the financial scheme, which have to be dealt with by expert committees. The question of borrowing powers and facilities for the Federal and Provincial Governments is one which is dealt with in the note supplied to us. My friend, Sir Provash Chunder Mitter, has very rightly pointed out that we should set up this Federal Loans Board, which we must try to persuade all the Provinces and Indian States to join, on such terms as may be equitable to all. There is again the question of Audit, to which my friend, Sir Provash Chunder Mitter, referred. At present there is a great advantage, no doubt, in the maintenance of an independent Audit under the direct control of the Central Government for Provincial accounts. That is an advantage that we should not like to miss; but the independence of audit need not necessarily mean that we should give up the right of each State, or of each Province, and of their Legislatures, to prescribe their expenditure, and to employ this Audit Department for their own purposes. Therefore, while I would advise the co-ordination of Provinces and States in a common audit organisation, and they should avail themselves of the present Indian Audit Department for that purpose, I would do nothing which would set up any outside authority as against the Legislative sovereign authority, or the sovereign authority of the Indian States, which would detract from their power to provide for whatever form of independent audit each may think it proper to institute. That will dispose of the question.

Mr. Sastri: I do not follow what you mean. Do you mean that you would lend your Central Audit Organisation?

Mr. Iyengar: We will place it at their disposal. For instance, take the subject of agriculture, or of any of the other services common to all the Provinces, there is a scheme of co-ordination and a common interest. There are various subjects of Provincial importance in which the Central Government, or any Federal Government for that matter, may find it proper and necessary to do whatever is essential for co-ordinating their work, and for putting them in touch with similar organisations outside, or governments which do similar work, such as, for instance, the International Convention

of Labour, or of Hygiene, or of Sanitation. For all these purposes, I take it, the Federal Authority will be in operation; and, in doing that, they will have to act in co-operation and co-ordination with Provincial Governments.

Mr. Gavin Jones: Do you agree to the borrowing?

Mr. Iyengar: The borrowing I would put into the hands of an Indian Loans Board. That Loans Board will be the body through which, as in Australia, Provincial Governments, if they want to do so, can secure their loans. When the Central Reserve Bank is established, I take it that the Government of India will cease to have any Banking functions either for the Provinces or for the States, and it is open for the Provincial Governments and for the States to avail themselves of that Loans Board for their operation.

Dr. Shafa'at Ahmad Khan: The operation of what?

Mr. Iyengar: Loans.

Dr. Shafa'at Ahmad Khan: Not co-ordination of all expenses?

Mr. Iyengar: Not co-ordination in respect of common services which they may agree to. It is purely by agreement. Certainly it will not be an imposition.

Sir Akbar Hydari: Do you want to part with the Reserve Bank?

Mr. Iyengar: I am only saying that, when the Reserve Bank is established, the Government of India will cease to fulfil any banking or currency functions.

Sir Akbar Hydari: With regard to the question of administering loans, and so on, would you take it over as part of the duties of the Reserve Bank?

Mr. Iyengar: No. I would place the borrowing powers, or the provision of loans for States, or for the Provinces, or for the Federal Government, in the hands of an independent Loan authority.

Mr. Gavin Jones: To control it?

Mr. Iyengar: Yes: to be their agents.

Mr. Gavin Jones: Do you mean to control or to advise?

Mr. Iyengar: It may perform the functions of a bank. I think that we have a parallel in Australia. If we start them with certain resources, and they are given the authority to disburse loans on their own terms, they may perform the functions of a bank very easily. I will develop that scheme later. We are not on it to-day.

Similarly on the question of railways, I shall say only one word. Railways, so far as we are at present agreed, are to be under Federal control in so far as they are now under the Central Government's control—in respect of particular State Railways—through the Railway Board. I would develop the matter, and I would place before the Committee the suggestion, in regard to these railways, whether it may not be possible to preserve the proprietary rights or the interests which the States may possess under a scheme of common ownership, vested in an authority who

could distribute profits in proportion to the proprietary rights of these units. That is a matter also which I am only suggesting, because they have such a scheme in operation, for instance, in my Province, where a District Board and Railway Company own a common railway. There is also the question whether the surplus revenue, *i.e.*, the profit now earned by Indian railways, should be a Federal asset, and to what extent, if it is to be a Federal asset, the units representing the States should be allowed to participate in the benefits of that asset, and what concessions they may make as against that. Those are matters which, I think, had better be thrashed out in the sub-Committee. It may be, for instance, that if we find that the railways really cease to yield a profit, and all that can be done for some time is to see that the Indian railways are able to maintain their reserves and sinking funds, they can eliminate railways from this discussion as a revenue yielding source; and they will then be in a position to discuss what other financial resources should be commonly shared, and what other financial liabilities should be commonly incurred by the Indian States and the Indian Provinces.

(The Committee adjourned at 4-35 p.m.)

PROCEEDINGS OF THE THIRTIETH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON THE 25TH SEPTEMBER, 1931, AT 11-0 A.M.

HEAD 4.

Distribution of Financial Resources between the Federation and its Units.

PRELIMINARY DISCUSSION—*concld.*

Mr. Iyengar: My Lord Chancellor, I am sorry that I omitted to refer yesterday to one important matter which I wanted to mention before I concluded my remarks. It is in regard to the question of tributes. The suggestion which is made in the official Note is that the new Federal Budget should be prepared on the assumption that the tributes from Indian States should be retained as a receipt in the Federal Budget. That question is further examined in the Note in paragraph 31, and I would invite the attention of the Committee to what is said there:—

> "It has further to be remarked that the objections of States to continuance of these payments would not be based solely on the plea of their being supplementary to the ordinary scale of contribution by Federal Units. There is the equally cogent plea that these payments denote relations of a feudal character and that the States will admit no such relationship between themselves and the Federal Government."

I would like to emphasise this—that whatever may have been the nature, the equity, or the propriety of these levies in the past (and

I know that many Indian States have felt the implications of these tributes very strongly) there is absolutely no reason now to accept any such principle. It would be fundamentally wrong to accept any such principle as tributes from any States to the Federal Government. The question whether the States should contribute to the expenditure of the Federal Government by definite contributions, or by allocating definite resources, or through taxation, stands on a different footing. Therefore I would suggest that, in framing this Federal Budget, we must get rid of these tributes as an item of receipts. The official Note apparently would find a difficulty in calculating the Budget if as large a sum as 70 lakhs is taken out; but I feel, in view of the present uncertainties, and in the event of the reconsideration of the whole position of our future financial resources which has to be made on account of the financial situation which confronts all the countries of the world to-day, it is a wholly unnecessary complication, and the maintenance of a running sore, if we allow these tributes to continue in any shape or form in the coming Federal Budget, for whatever purpose they may be needed. If the matter is treated as a contribution from the States, it leads to the other question as to what similar contributions should be levied from other States or Provincial Units in the Federal Government for the same services for which these tributes will be appropriated. All these complications will be avoided if we once and for all get rid of the tributes and treat the obligations of all States and Units of the Federation on an equal footing.

Sir Maneckjee Dadabhoy: My Lord, It is no use my disguising the fact that I am approaching the discussion of this subject, not only with a considerable amount of diffidence, but with a nervousness in view of the many entanglements involved in the question of Federal finance. My difficulty is more emphasised by the fact that we in India are starting at the wrong end. In all other countries where federation has prevailed and has been worked, we have found that they have a number of clearly defined Units. They have not only those clearly defined units, but if we take the United States of America—if we take Germany or other countries with federal forms of government—we find that the States possess both individuality and consciousness. In India, the Provinces have been governed under the three Reforms by a system of government which entirely differs from the units to which I have referred. In India, as was correctly pointed out in the Simon Commission's Report, a number of administrative areas have grown up almost haphazard, as the result of conquest, supersession of former Rulers, or administrative convenience. There has not been, unfortunately, with our Provincial Governments, an introduction of that system of approaching or preparation for the assumption or the adoption of a general federal system. In the other federal countries the system had been completed, had been perfected by the formation of separate entities, not only in the matter of internal economy, but also in the matter of their Parliaments, and also in the matter of their Reserve Banks—which seems to me to be one of the most indispensable factors in a

scheme of Federal finance. The formation of a Reserve Bank, to my mind, in India at present, is far distant, on account of various circumstances to which I need not refer here, for I shall have another opportunity of speaking on that subject.

It is true that, during the last few years, there has been a distinct growth of provincial consciousness in the Provinces as well as in the Central Government; but political consciousness, My Lord, is entirely distinct, in my opinion, from financial *consciousness. And that growth has still not matured, so what we now have to do is to find out a system of Federal finance* for India which is not wholly natural, but which is going to be a hot-house product. We have first to design the hot-house, and then to bring in different plants on a common soil. You have now on this new soil to grow your Federal finance. As I stated just now, we have not all these perfected schemes, and so we have to go in for a sort of hot-house product. Our difficulty is enhanced by *two distinct facts. The first is that, at present, all the Provincial resources are depleted*, and we are starting this Federation at a time when the Provinces are ill-prepared for the adoption of a general scheme of finance. Secondly, our difficulties are also enhanced by the problem of the Indian States coming in. I may also state at this stage that, in discussing this question, we have not, up till now, heard the views of the Indian States as regards the financial grounds on which they would come into the Federation.

The whole question of Federal finance, in my opinion, depends on the domain of taxation, that is, the taxes which we shall allocate to the Federal Government and to the Provinces It therefore becomes necessary in my opinion, *that I should deal with point (iv) first—because that point seems to me to be the foundation of* the whole thing—and that I should give my opinion on the other questions which were raised by Your Lordship after I have discussed that question. In forming the scheme of finance, Sir Walter Layton and the Government of India have unfortunately gone on certain indefinite assumptions. We are informed that the Provincial revenues are going to remain stationary, and that the Central *revenues are going gradually to expand. In this scheme, it has been attempted in time to take away the entire field of* Income-tax from the Federal Government, and gradually to allocate the payment of that revenue to the Provinces. As far as I understand, only Customs, Salt, Super-tax, Commercial tax, and Government share in the Reserve Bank profits have been reserved for the Federation.

It has been argued—and we have also heard from His Highness The Maharaja of Bikaner—that the Federal Government should not have the right to impose "direct" taxation. My Lord, in this matter I am distinctly of opinion that the Federal Government *should have complete domain both over "indirect" taxation* and "direct" taxation, and that it would not be possible on economic grounds to deprive the Federal Government of the right to

impose "direct" taxation. So far, at present, our revenue from this source of "direct" taxation is about 20 crores. I mean Income-tax. Allowing 3 crores for cost of collection, there is a net revenue of 17 crores. In considering this question, I would request this Committee also to bear in mind that, with the contemplated separation of Burma, we shall lose about 5 crores 44 lakhs in our Income-tax revenue. That will considerably reduce the total amount of that income; and if on the top of this, there is the scheme suggested of providing the Provinces with financial assignments and half of this amount of Income-tax raised is to be transferred to the Provinces, I am afraid it will make a big hole in Federal finance; and it will be very difficult to obtain the replacement of that revenue from other sources.

The present scheme is to assign half this revenue to the Provinces and to permit the Provinces to raise another surcharge to the extent of half of what is assigned; in other words, one quarter of the total income. I do not know, Sir, how the Provinces will receive this—the people; but if I understand the psychology of our people, I say, Sir, that the imposition of a surcharge on half the Income-tax assigned to the Provinces will not be received with any favour by the Provincial Legislative Councils. It is a good inducement given to them in the matter of the enhancement of their revenues; but; My Lord, the Income-tax has been considerably increased during the last decade. Since the War we have had four distinct Acts for the enhancement of the Income-tax revenue. I am corrected here, My Lord, by my friend Mr. Rama Rau, who says that the Central Income-tax collected in Burma was about 2 crores. I stand corrected. That 5 crores 44 lakhs which I mentioned refers to Customs. I am much obliged to my friend, Mr. Rama Rau, for giving me that information. However, as I said, the enhancement will not be received favourably by the Provincial Councils. Income-tax has been raised recently on four occasions. A year ago, in 1930, the Super-tax was raised by one pie; but this year Income-tax in India was raised from 19 pies to 26 pies, and it has become a considerable burden. Sir George Schuster, when he introduced his financial Budget in India, made a distinct promise that this was only a temporary measure and that, as soon as the Budget was balanced, this heavy rate of Income-tax would be done away with. My Lord, unfortunately, things have shaped entirely differently since the last Budget was passed; and this year, I am afraid, we are going to have a much larger deficit in the Central Budget than last year; and there is no hope of this heavy taxation being decreased.

I am referring to this matter, My Lord, because Sir Walter Layton, in one of his recommendations, stated that the rate of Income-tax was low, and that, for the purpose of successfully carrying on the Federal finance, the rate could be raised—that it was a low rate and ought to be raised. Of course, Sir Walter Layton did not anticipate that, before the Federation came into operation, the Government of India would be pressed with the

necessity to raise that tax by 40 per cent. this year. Therefore, I am referring to this matter in order to remove all doubt from the minds of the members of this Conference and to tell them plainly that they should not entertain the least hope of Income-tax revenue expanding in any way and being a source of relief to the Federation.

Sir, as regards Customs too, I entirely differ both from Sir Walter Layton and the conclusions arrived at by the Government of India. It is true that our Customs duties have increased since the War, but there are entirely different reasons for that increase Now, with the lower value of commodities, it is not a practical proposition to expect that the Customs revenue will either substantially increase or will even remain stationary at its present level. India is an agricultural country, and, on account of the low values of important commodities such as wheat, rice and other cereals, it is impossible now to compete in the matter of exports with other places like Russia and Australia. Therefore, we shall not in the near future be able to export largely. You may ask why this should affect our Customs revenue which depends upon imports only; but in order to maintain the balance of trade, unless you export, receive money and pay for your imports by exports, it is not possible to maintain import to a very considerable extent Therefore, in future, there is every likelihood that, instead of Customs revenue expanding, it will gradually diminish. Recent events—the events of the last week which have taken place in Bombay—will also affect our imports very considerably, and our revenue from imports will not be maintained. Further, if Burma is separated we shall lose 5 crores 44 lakhs under this head.

Further, it is contemplated that, in process of time, the Salt-tax shall be gradually entirely assigned to Provinces and disappear altogether as a Federal item. I confess that, logically, the Provinces are entitled to this revenue; there can be no question about it. But as a matter of administrative convenience, and for the purpose of maintaining a uniform rate of taxation, and in order to stop the Provinces from quarrelling amongst themselves, salt has been from the very commencement made a source of Central revenue. If you then seriously think of parting with the Salt-tax, I do not know what revenues you are going to have left with you for the purpose of the successful management of the Federal Government. It will cause serious complications. We shall be compensated by being told that there will be a transfer of Commercial Stamps to the Federation. That will only give us a very paltry sum per year, and will not make up for the heavy losses which are contemplated by the transference of Income-tax and Salt-tax to the Provinces.

In this connection, speaking about the Federal Government, it suggested that the Federal Government will have to bear the ability for the whole of the administrative charges which have to now been borne by the Government. I do not think this

would be fair to the Indian States if we want them to come into the Federation. This question will have to be seriously considered and an allocation of financial responsibility will have to be carefully discussed.

As regards income from the profits of the Reserve Bank, I may tell this Conference that that is a mere matter of speculation at present. We are in an entirely different position to-day from what we were. The banks in India, not unlike the banks in England, have lost their big business. Their profits are considerably diminished. They have been compelled to reduce their dividends. Therefore, even if you are in a position to-day to start a Reserve Bank (which in my opinion is a *sine qua non* for the establishment of a Federation) you need not expect much or even anything substantial by way of profits from the Reserve Bank.

How, then, is the income of the Federal Government to be obtained? It is suggested that the graduation in intermediate incomes be steepened. It has already been steepened. It was steepened last March by the Finance Bill which was introduced in India, and there is absolutely no further room for any improvement in this matter. In fact, the wage-earners and the middle classes in India are in an extremely poor state, and it would be difficult to obtain from them any income by further steepening the graduation of intermediate incomes.

It is also suggested that the present exemption limit should be lowered. I do not think any of my Indian friends here will agree to any such proposition. The present limit is 2,000 rupees, which has already affected heavily many people: and I do not think it would be a step which would, at any rate, be welcomed by a large body of politicians.

It is also stated that our income may be expanded by amending the law as regards foreign investments. In regard to this, a Bill was introduced by Sir George Schuster last year which was circulated in order to elicit public opinion. I am not in touch with it, but at any rate I know that something can be said in regard to it, because, to the best of my information, about 26 crores of rupees were transferred for foreign investment during 1929-30 and 30 crores during 1930-31. I am afraid we shall have more trouble now that we have gone off the Gold Standard; and, very probably, those people who have sent money to this country will burn their fingers over it.

Then the most important point which has been suggested towards increasing the income of the Federation is the abolition of exemptions of agricultural incomes. It is a very difficult proposition. It has taxed the minds, not only of the Government of India, but also of the Provinces. This matter has been very carefully considered and thoroughly gone into by the Taxation Committee: and I think that, when we are starting a new constitution, which has to be worked with full harmony, good will and sympathy, it is

to be feared that a measure of this character will not be received with any sympathy in India just at present. Of course, the Provinces might make experiments in their own way by passing legislation, if they are in a position to do so; but as a Federal source of income or as a "Central" source of income, it is not likely to have many supporters.

It is also suggested that the Provinces or the Central Government may go in for death duties, and that these death duties might produce large sums of money and help the effective carrying on of Federation. My Lord, I entertain very strong views on this question. We have in India a sort of probate duty as well as what we call succession duty, but those measures apply in quite a different field. Those duties it would be not only difficult to adopt, but they would be received in India with a considerable amount of resentment.

Mr. Joshi: By whom?

Sir Maneckjee Dadabhoy: I will tell you, if you will just wait a minute. It is purely a socialistic doctrine. In my opinion, it is wrong in principle. I do not think India will agree to it, for two or three reasons. In England it has worked havoc. It has ruined aristocratic families and extinguished extensive capital, and the result has been unemployment in the country. In three generations a man's fortune is wiped out. That money, which could have been appropriated for the establishment of industries for the purpose of employing men and giving them food, has all been taken away by the State. In England what has happened? You imposed the death duties and you paid the dole. This death duty is impossible in India from another standpoint, and that is the present position, the joint coparcenary state of a Hindu family, which makes it difficult for the introduction of this tax among Hindus, among a large body of people. The joint coparcenary property and the law of survivorship which prevail in India make it absolutely difficult for the imposition of a tax of this nature, and if a large class, the largest community, cannot be brought within the purview of the Act, it would be futile to try to extend this measure of taxation to other communities.

Therefore, the question for us now is to enquire whether the resources of the Federation and of the Provincial Governments will be sufficient to meet the necessary expenditure. My Lord, I have not discussed this subject with the object of putting a wet blanket on the question of Federal finance; but I want to enable our friends at the Round Table Conference to bear these facts in mind and to find out in what way the resources can be made available for the purpose of federation. It was for this reason that, when I started, I said that I was nervous of the herculean task which we are undertaking; and though our deepest sympathy is that federation should take place and that the success of it should be assured, I feel on the question of finance extremely doubtful, and I think it will tax our energies to a considerable extent to find

out both the Provincial and the Federal resources for the purpose of carrying on an expensive Federal Government.

The next point is, what financial adjustments will be necessary. Of course, this will be discussed in the sub-Committee to which you, Lord Chancellor, have alluded; and as it is truly a matter involving many intricate points I will not trouble the Committee with it now. I would only ask, in this connection, for my friends to bear in mind that, in framing a Federal or a "Central" Budget, it will be difficult to make any estimates of our income or of the values with precision and with a measure of rigidity or certainty.

These, My Lord, are my general remarks with reference to Federal finance. I have dealt with subject (iv), and I shall very briefly answer the other points raised by you.

As regards the first query:—

> "Is there to be a 'Central' Budget distinct from the 'Federal' Budget?"

I am distinctly of the opinion that there should be one single Budget. Otherwise a lot of complexities will arise owing to the division of taxes, and particularly as the States do not want "direct" taxation to be imposed by the Federal Government. I entirely agree with the valuable Note which has been prepared, My Lord, for you; and I, for one, am looking forward to the day—though it appears to me that that day is very distant—when we can cheerfully and willingly go in for a scheme for the elimination of all distinctions between "Central" and "Federal" finance, involving separate funds, separate Budgets, and the unpleasant and difficult task of making various allocations.

As regards question (ii), I think that there could be no question about the future debts. With regard to the future debts, I agree with what my friend, Sir Provash Chander Mitter, said yesterday, when he spoke in a very able manner upon this question. I fully agree with him that the future debts should be wholly Federal.

As regards the past Public Debt, there may be a division of opinion; but I think that this Conference will be acting with wisdom if even in the matter of past debt, they make it a Federal matter. It will be good for the safe working of the new Federation that the past debts should also be treated on those lines. I know of the serious difficulty involved in this matter by reason of our unproductive debt, and perhaps, it would affect the Indian States. If I may say just one word about this unproductive debt—my friend, Mr. Iyengar, alluded to it yesterday, and he pointed out in his vigorous manner that, after all, it is only a question of 172 crores, and that these were partly War debts; but I think that it would be prudent and judicious to treat them as a matter of common concern. Whatever budgetary distinctions we may make, as the past liability, in my opinion, will have to remain a charge upon the whole of the revenues of India, and as we could not dispense with that liability, I think that it would be right

that it should be made a Federal subject. If, in other matters, we treat our Indian Princes in a generous way, by abolishing their contributions which we now take—which amount to a figure of 70 lakhs, to which I shall hereafter refer—I think that the Princes ought cheerfully to come in and take the responsibility, in the proposed Federal Constitution, of this unproductive debt. In this connection I entirely agree with the remarks of our present High Commissioner. He said:—

> "The loans we have raised in the past in England under Acts of Parliament are charged on the revenues of India, any attempt on our part to earmark such items of such revenue in future for certain purposes may contravene the provisions of these Acts, and may indeed engender suspicion in the minds of investors in this country, and react on our credit generally."

I think that these are very significant words, and that it is a very sensible suggestion. I hope that the Princes will co-operate with British India in the matter of taking over this unproductive debt, and regard it for all purposes as a matter for the Federation.

As regards sub-head (iii), I entirely agree with my friend, Sir Provash Chander Mitter, that both the receipts and the expenditure of the British Indian Provinces, which are not Governors' Provinces, should be treated as Federal. After all, there is only a small loss of 1 crore of rupees, and I think that it will be advisable for the Federal Government to treat their case as a Federal subject.

Coming to question (v), the matter has been partly covered by my speech; but Sir Provash Chander Mitter said that half should be made available to the Provinces and after some time, the whole of the revenues should be recovered by the Provinces. I do not feel myself in agreement with Sir Provash Chander Mitter in this matter.

As regards the item of tribute—74 lakhs of rupees—I think that it would be wise to abolish it. I do think that the payment of practically one-third of this total amount by the Mysore State alone must cripple its industries and affect its resources. Therefore, I feel that, if the States come in with us, and adopt the policy of give-and-take, and agree with us in other matters, there ought to be no hesitation as regards the entire abolition of these tributes. I think that the Federal revenue generally will be able to bear the strain of this loss of 74 lakhs of rupees, as the other result is far more valuable, namely, the co-operation of the Princes in our financial adjustments.

Point (vi) involves a somewhat intricate decision. It is true that the Customs revenue of the Central Government has risen from 10 crores to 50 crores in the last few years. The Customs duties of the Government of India have been the largest and the most elastic source of Central revenue. We cannot lose sight of

the fact that this substantial increase in Customs revenues, and also this continuous expansion, has increased the burdens imposed on the population of the Indian States. The States as well pay for the goods imported into their territories; and, therefore, this matter is one which requires careful consideration and adjustment. It is true and it is rightly said that the Customs duties are associated with the protective policy, and that the Indian States should have no ground of complaint, because they protect their industries, and enable them to go in for a larger programme of industries in their own territories. But it must also be borne in mind that, in all the States, there are not such industries established. There are some States which are doing well. I know that, in many States, textile industries are now flourishing on account of many reasons. Of course, they are free from the Income-tax and Super-tax, which are very large burdens, and they also enjoy exemptions from the stringent provisions of the factory legislation, which, as Mr. Joshi reminds me, has handicapped in many ways industries in British India. No doubt the States will have to make sacrifices; and I understand they are willing to make reasonable sacrifices.

H.H. The Maharaja of Bikaner: It all depends.

Chairman: Who is the judge of the reasonableness?

H.H. The Maharaja of Bikaner: And we certainly do not want all the sacrifices to be on the part of the States for the benefit of British India, or anyone else.

Sir Maneckjee Dadabhoy: No, Your Highness.

H.H. The Maharaja of Bikaner: I am sure you were not suggesting that.

Sir Maneckjee Dadabhoy: I have asked that we should wipe off these tributes which we are receiving from the Indian States.

H.H. The Maharaja of Bikaner: How much is the debt compared with the 70 lakhs you are remitting us?

Sir Maneckjee Dadabhoy: But there are other things. Look at the benefits which indirectly the States will get, both financially and politically.

H.H. The Maharaja of Bikaner: Will you not explain those for our benefit? We shall then be in a better position to judge?

Sir Maneckjee Dadabhoy: Your Highness, I have already explained that in my speech the other day. Now question (vii) is very very important. Of course, we hope His Highness the Maharaja of Bikaner will throw considerable light on this subject.

H.H. The Maharaja of Bikaner: I am not dealing with these questions. Some other States' Delegate will.

Sir Maneckjee Dadabhoy: According to the Report of the Butler Committee, the consumption of the Indian States represents something like 16 per cent. of the goods imported. The States also claim a share in the Salt tax, Railways receipts, and other

Budget items, though they are small in amount. They also claim a share in the proceeds of Excise.

Dr. Ambedkar: Railway receipts?

Sir Maneckjee Dadabhoy: If you read Sir Walter Layton's Report you would know that. The States also claim a share in the proceeds of Excise. Then, on the other hand, there are counter claims made by British India against them. The cost of the Defence of India has increased from 30 crores to 50 crores in the last 15 years. If a proportion is worked out, the Indian States would legitimately have to pay about 5½ crores a year for this Defence. The Indian States cannot possibly say that the maintenance of this Defence has not helped them. It gives them security; it gives them protection; it gives them security to carry on their programme and collect their own revenues in their territories. However, as I say, the matter is a contentious one, and the Butler Committee recommended the appointment of a special committee to go into it—to settle the claims and the counter-claims.

H.H. The Maharaja of Bikaner: Will you not in this connection also read out paragraph 48 of the Butler Report.

Sir Maneckjee Dadabhoy: I have read everything. Sir

H.H. The Maharaja of Bikaner: Not that we are very much in love with the Report; but still you might as well read that paragraph.

Sir Maneckjee Dadabhoy: I think we cannot allow you to go scot free altogether, irrespective of the Butler Committee's decision. You have to pay.

H.H. The Maharaja of Bikaner: Why not read out paragraph 48 also?

Sir Maneckjee Dadabhoy: You can read it. I have read it and I know it very well. My contention is that, if this committee had already been appointed, the matter would have been settled by this time.

Mr. Jayakar: Will you not read paragraph 48 for our benefit?

Sir Maneckjee Dadabhoy: I have not got the book here. His Highness will read it. My contention is this, My Lord. I submit, in this matter, the claims and counter-claims are of practically equal magnitude. The Butler Committee recommended that they should be separately examined, and the reasonable claims of the States or groups of States to a share in the Customs revenue, and the second question of the adequacy of the States' contribution to Imperial burdens, should be decided by this committee. I say that, unless this question is finally settled, either by the appointment of an expert committee or between the States and British India by mutual agreement, it is impossible to settle the question of Federal finance. I would also like His Highness The Maharaja to bear in mind the ordinary doctrine that a claim by a single unit of the Federation is not ordinarily admissible.

Then question (ix):—

> "Should the Federal Government have any control over Provincial borrowings? Should there be a Federal Loans Fund?"

Here also I am in agreement with Sir Provash Mitter that we should have a Loan Board to control the borrowings and guide the Provinces in the matter of borrowings, keeping a control and strict supervision over all their borrowing programmes. If the Federal Government is to be made a success, in my opinion, the Federal Government should keep strict control over all Provincial borrowings. The Provinces borrow, not on the credit of their own Provinces; they borrow on the credit of the whole of India. Their borrowing involves the credit of the whole of India. There may be prudent borrowing; there may be cases of improvident borrowing. Therefore it is essentially necessary, in my opinion, that strict control should be maintained over Provincial borrowing. This also has been recommended by the Government of India in their Despatch. I am also distinctly of opinion, in connection with the questions that the Provinces must accept certain obligations, including, in particular, debt charges and the salaries of members of the all-India Services employed within their limits.

Then, as regards the last sub-head, My Lord, I am also of opinion that the Federal Government should continue the existing policy. At present the Central Government holds the Provincial Balances in Government Treasuries and prescribes the minimum Balances to be kept by Provinces. In my opinion, there is no justification or warrant for altering this practice; and I have not even seen that there is any strong demand for altering the system which at present exists. When the Central Bank—the Reserve Bank—is created in India, that institution will, of course, take over this function; but till those functions can be taken over by the Reserve Bank for the whole of India, I think it is necessary that the Provincial Balances should continue to remain with the Government of India. I also think that the Federal Government should perform the services on a commercial basis, charging a reasonable amount for this purpose, and the Federal Government should not attempt to make any profit out of these Balances. Here comes in another question, so far as the Federation is concerned—what will be the position of Indian States with regard to these Balances, I mean their own Balances? That matter will also have to be carefully considered, and I should like to know the opinion of the Princes before I say anything about it.

Lastly, what I have to say in this connection is as regards the residuary powers. After the Federal, "Central" and Provincial subjects have been settled and schedules drafted, I am of opinion that the residuary powers should be left in the Provinces. Our aim, and also, I understand, the general aim, is to make the Provinces as far as possible autonomous, to make them self-contained, to give them all possible resources for filling up their depleted

treasuries, and to make them self-supporting; and, in view of the considerations which I have urged in the first part of my speech as to the difficulties which these Provinces will have in meeting their expenditure, I think it is only right and proper that the residuary powers of taxation should be left in them. The Central Government is not likely to be very much affected or prejudiced by this, because, if the Federal Government wants to go in for any other or new form of taxation, it could always do so with the consent and sanction of the Provinces.

Mr. Joshi: I wish to deal only with one point and that very briefly. That point is one which was raised by His Highness The Maharaja of Bikaner, namely, that the Federal Authority should not impose any "direct" taxation. I am not proposing here to make any suggestions for the distribution of the present resources. My only point is that no constitutional restriction, as was proposed by His Highness The Maharaja, should be imposed upon the Federal Government. The Federal Government's power should not be confined only to the imposition of "indirect" taxation. It should also have the power of levying "direct" taxation. I feel that each authority in India, whether it is the Federal, Central or Provincial, should be able to keep a proper proportion and balance between the "direct" and "indirect" sources of revenue in order that the burden of these taxes should fall upon the people in proportion to their ability to bear that burden. If the Federal Authority depends only upon "indirect" taxation for its maintenance, the burden, in my humble judgment, will fall more heavily upon the poorer classes, considering their ability to pay. I feel that this is unfair—especially so as the Federal subjects as at present proposed, exclude the welfare of the workers and of the masses. A large part of the proceeds will be spent upon Defence; and, in my humble judgment, most of this expenditure—namely, the expenditure upon the Army—is for the benefit of those people who have a stake of property. I believe that the statement of Karl Marx, that the workers have nothing to lose but their chains, still holds good. Moreover, My Lord Chancellor, considering the strength of the various political parties in the Federal Legislature, to confine the Federal taxation only to "indirect" taxes will lead, in my humble judgment, to extravagance of expenditure. From what little experience I have of the Indian Legislatures, I have found that the pressure for economy on Government becomes strong only when there are proposals for the increase of income-tax. We know what happened only this year. Government easily got their "indirect" taxes passed by the Legislature, but they found it difficult to secure even a small increase in the Income-tax.

Sir Maneckjee Dadabhoy: You are perfectly wrong. I supported it in the Council of State, and it was agreed to without opposition—a substantial increase—in view of the crisis which was prevailing.

Mr. Joshi: I am glad that Sir Maneckjee Dadabhoy was in favour of the increase of the Income-tax. Still, my statement remains true. I am considering what happened in the Indian Legislature. ...

I have nothing more to add. I am very glad that my proposal was supported by Mr. Rangaswami Iyengar; but I am more glad that my proposal has the distinguished support of Sir Maneckjee Dadabhoy.

Sir Muhammad Shafi: It is not my purpose this morning to enter into a discussion of the various points covered by the questionnaire which Your Lordship has circulated to us. The issues, as well as the difficulties, connected with Federal finance, with which this Committee is confronted, have been well brought out in the two Memoranda prepared for us in the Finance Department of the Government of India, and the sub-Committee which it is proposed to appoint will no doubt deal with all those issues and difficulties. I reserve to myself the right of expressing my opinion on those issues and difficulties when the sub-Committee, after a very careful examination of all the pros and cons, have submitted their Report.

I propose this morning to offer only a few observations on one very important aspect of our Federal finance. Lord Chancellor, the two Memoranda prepared for us in the Finance Department of the Government of India have brought out the budgetary difficulties with which we are confronted as a result of the division of subjects into three groups—Federal, "Central" and Provincial. Some of us foresaw these difficulties at the earlier stage of this Conference, and made an earnest appeal to the advocates of both schools of thought to reduce these three groups to two—Federal and Provincial. While, on the one hand, we appealed to the advocates of uniformity, recognising that uniformity was desirable to a certain extent, not to carry this doctrine of uniformity to the length of a shibboleth, we appealed to Their Highnesses for the abandonment of what I characterised on that occasion as our present-day mentality, and to visualise the position as it will come into being after our scheme of all-India Federation has materialised. I ventured to point out on more than one occasion that, what will happen when the proposed scheme of all-India Federation has materialised, will be this—that the internal autonomy and sovereignty of the Indian States will be fully protected, and, in addition, the Indian States will become equal partners with British India in the control and administration of all questions common to the whole country—a privilege which, I venture to think, at present they hardly enjoy.

Therefore, I ventured to submit that it was in the interests of Their Highnesses that they should look at this question of division of subjects into Federal and "Central" with a liberal eye. I went further, and I suggested that, in this connection, we might well follow the example set before us by the Canadian Act, so

that, even with regard to legislation which actually is undertaken by the "Central" Legislature, the autonomy of the Provinces and the autonomy of the Princes will remain protected. I once again venture to appeal to both parties this morning to give very careful further consideration to this important matter, so that this complication—this difficulty in the budgetary side of Federal finance—may be averted.

In this connection, I wish to invite the attention of this Committee—apart from the difficulties of allocation, and so on and so on, to which my friend Sir Maneckjee Dadabhoy has made a brief reference—to one or two points which I think are worthy of consideration by the sub-Committee which we are appointing. Now, there will be the Central Executive. We are all agreed that with the exception of the Crown subjects there will be joint responsibility of the Cabinet. This Cabinet will have on it at least one representative of the Indian States. Now, when the question of the Annual Budget is first discussed in the Cabinet—I have had experience of six Budgets myself in the Government of India, and of discussion of them within the Cabinet—will this representative of the Indian States have a right to take part in the Cabinet discussions relating to the Budget connected with the "Central" subjects? If the reply is "Yes," I say that it is absolutely inconsistent, from a constitutional point of view, with the position that you are creating What right has he, from a constitutional point of view, to enter into a discussion of "Central" subjects? But if he is not to take part in those discussions, what about your joint responsibility? The position thus created is in the highest degree anomalous, I venture to say.

Now let us come to the discussions in the Legislature. Where are you to draw the line? It will be very difficult indeed to draw the line, for the repercussions of some of the decisions taken by the Legislature, in connection with some of the "Central" legislation, on the Indian States, may well entitle the representatives of the Indian States to claim in the Legislature that they have the right to take part in legislative discussions during the discussions of certain subjects, while the representatives of British India will say that, these subjects being "Central" subjects concerning mainly British India, the representatives of the Indian States have no right to take part in those discussions. You will create for yourselves, if I may venture to say so, by the recognition of this "Central" group, neither fish nor fowl nor good red herring (as I call it). You will land yourselves into difficulties which, I submit, are in the highest degree detrimental to the best interests of India.

I therefore once again appeal for reconsideration of this matter, and I appeal to the representatives of Their Highnesses who will be on this sub-Committee, as well as to the representatives of British India who will be on this sub-Committee, fully to consider this matter. After all, there are only nine heads which have

been grouped together as "Central" subjects. It seems to me that some of those heads may well be relegated to the realm of Provincial subjects, and others may well be included amongst the Federal subjects.

Sir Tej Bahadur Sapru: What does Sir Muhammad Shafi mean? Does he mean that there should be provincialisation of Civil Law and Criminal Law, or control of Mineral Development?

Sir Muhammad Shafi: I do not intend to provincialise that.

Sir Tej Bahadur Sapru: I thought that Sir Muhammad Shafi said so.

Sir Muhammad Shafi: I never said so. I said that some of the nine subjects might be provincialised, and others might be federalised, and the group of "Central" subjects might disappear. I did not say that Criminal Law should be provincialised. I did not say what should be federalised or what should not be federalised. I never said a word about what should go to the Provinces.

Sir Tej Bahadur Sapru: No; but I should like to be informed which, in Sir Muhammad Shafi's opinion, are proper subjects to be federalised, and which, in his opinion, are proper subjects to be provincialised.

Sir Muhammad Shafi: If my friend, Sir Tej Bahadur Sapru, had waited for just one minute, that was exactly what I was going to suggest. I will offer a few observations, and that is all. So far as Criminal and Civil Law is concerned, I have already expressed my opinion at an earlier stage of our discussion that uniformity in Civil and Criminal Law is desirable. Consequently, for the sake of uniformity, I am prepared to federalise that subject, subject to my observation that the Canadian model should be followed in that respect. My friend, Sir Tej Bahadur Sapru, will remember that I dealt in detail, in one of my speeches, with that part of the matter. As regards the remainder of the subjects, personally I see no difficulty at all. I will give only one or two examples. I see no difficulty in the Survey of India being federalised and made a Federal subject. It is obviously a subject which ought to be Federal; and, if I may venture to say so, Their Highnesses, who will be partners in the Federal Government, ought to agree to that subject being federalised. With regard to Archæology, what point is there in its remaining necessarily a "Central" or a Federal subject? Each Province can look after its Archæological Department. Why should not that be provincialised, or, on the other hand, it may be made Federal; it does not matter. The point is one which can be easily settled by the sub-Committee, and then decisions can be arrived at later by the main Federal Structure Committee. I am not insisting upon the federalisation of the one or the provincialisation of the other. My point is, why should this group of "Central" subjects be created, with the result that our Federal finance, our Budget, our admi-

nistrative machinery, the details regarding the control, and so on, should be as complicated as they will be if you maintain this third group? Why should we have any third group at all? Why cannot we after careful consideration, eliminate this third group by absorbing it partly in the Federal group and partly in the Provincial group? I venture to make an earnest appeal to representatives of both schools of thought to give their further careful consideration to this matter, and to see that the elimination of this third group, and its absorption partly into Federal and partly into Provincial subjects, will result in our Federal financial machinery being simplified, and in the avoidance of many difficulties and many complications which they will otherwise have to face. That is all that I have to say.

Sir Tej Bahadur Sapru: While I entirely sympathise with the desire to reduce "Central" subjects to the absolute minimum, I do not see why there will be any difficulty in Federal finance for that reason.

Sir Muhammad Shafi: You will not have two Budgets, but only one Budget.

Sir Tej Bahadur Sapru: I should like to put a question. Our real difficulty is that the Federal source of income is not enough, and we have to look to British Indian taxation. Supposing that all subjects are either Federal or Provincial, the Indian States are not willing to have "direct" taxes, and we are reduced to the position where we may have to submit to "direct" taxes. Therefore, Sir Muhammad Shafi's point will not touch that difficulty, will it?

Sir Muhammad Shafi: That has really nothing to do with my point.

Sir Tej Bahadur Sapru: Therefore, Sir Muhammad Shafi's *point is that he will get rid of the Federal Budget, but the "Central" Budget will still remain if you have to take some portion of Income-tax for "Central" subjects*

Sir Muhammad Shafi: That is an entirely different matter, which has nothing to do with the aspect with regard to which I have invited attention. I have confined myself to one question only.

Chairman: You, Mr. Zafrullah Khan, *said on the 14th September, which is a long time ago, that you wanted "Central" subjects done away with and divided between Federal and Provincial. It is the same point. I had written this note to you, but you were not here yesterday when I was here and when I was going to pass it to you. I meant to pass it to you to-day.* This is the *note:*—

"Dear Mr. Zafrullah Khan, On September 14th you said that you wanted "Central" subjects done away with and divided between Federal and Provincial. Will you kindly tell me how you deal with items 16 and 30 on page 32 of

the Federal Structure sub-Committee's Report, and the Report of the sub-Committee on page 39?"

Do not trouble to answer that now.

Mr. Zafrullah Khan: I want to say only one sentence. My submission was that, in course of time, I hoped to see this distinction done away with.

Dr. Ambedkar: I attach a very great deal of importance to the point which has been raised by Sir Muhammad Shafi. I hope that you will provide us with an opportunity, at least later on, to discuss this question—whether this recommendation made by the Federal Structure sub-Committee of the division of subjects into "Central" and Federal should be incorporated in the Constitution. Another point which I would suggest for your consideration is whether it would not be proper first to consider that subject, and then to refer this matter to the Finance sub-Committee, or whether you should have the Finance sub-Committee and then consider this matter afterwards. That is a matter for your consideration. I should have thought that it would be much better for us to come to some conclusion, one way or the other, whether we retain this dichotomous division in the constitution, or whether we had not better hand over those subjects to the sub-Committee for consideration.

Mr. Gavin Jones: Lord Chancellor, We have now come to one of the most important matters, if not the most important matter, with which this Committee has to deal; for it is quite certain that, unless we can arrange the financial relations between the Federal Government and the states, both British Indian Provinces and the Indian States, we will not be able to have a workable Federal Government. The relations must be arranged so as to give stability, and maintain the credit of India as a whole; and the matter will have to be dealt with by taking a broad view, and in spirit of give-and-take.

In my view, there are three important principles which we have got to bear in mind in considering financial relations. The first is that the Federal Government's finances shall be in a sound position, able to maintain the credit of India as a whole, and able to maintain Defence. The second principle is that it is necessary for a country like India that the Federal Government should be such that the greatest possible measure of self-government will be given to the Provincial States both in matters of finance as well as legislation. This must, however, be compatible with the maintenance of the financial credit of the States just as much as of the Federal Government. The third principle which we have to maintain is that of free trade and free communications between the different States.

To attain this, Sir, we must endeavour to arrange the relations between the Federal Government and the states so as to avoid friction; and I think it is evident from the Note that has been

put forward by the Government of India on Federal finance, that, so long as the distinction between the Federal and "Central" receipts and taxation remains, there is bound to be conflict. Therefore, Sir, I strongly support the suggestion, put forward by Sir Muhammad Shafi, that we should endeavour, if it is possible, to get down to it in a small committee and consider the thing impartially in the interests of the Federal Government and of the states as well. I think we shall then be able entirely to eliminate the "Central" subjects. If this is done, the whole question is simplified.

In the main, Sir, I am in agreement with the Memorandum which has been given to you in regard to Federal finance. I will not go into details. This is a matter for the sub-Committee. The details are important, and will probably have to be carefully considered by a special Commission even after the sub-Committee has decided upon the principles. But there is one point in the Note which I would like to bring to the notice of everybody, and more especially of Their Highnesses, *because this is of vital importance to the Federal Constitution.* It is that *mentioned in* paragraph 18, on Federal control of various financial matters in the States. By "States" I mean both British Indian and Indian States. It does not require any argument to maintain that international obligations must be maintained or that Federal property must not be taxed by the States. The difficult matters to settle are the question of internal Customs and Terminal These are internal "indirect" taxes which can very seriously affect the financial position of the Federal Government; and, therefore, I would ask everyone earnestly to consider these two matters. We do not wish to take away the sovereignty from any State; neither do we wish that any State should lose financially by any arrangement *that is made; but at least we must arrange that these taxes, which really in themselves are objectional taxes in any Federation,* shall not be increased, and that some means shall be devised eventually to maintain complete free trade and free communications between the different States. Also Sir, the Federal Government must have some control over the borrowing powers of the States. When the Australian Federation was first formed, the Units had free powers of borrowing; but the result was chaotic and now the Australian Central Government controls to some *extent the borrowing of the States. That is experience which we should note; and the Federal Government in India will have to control in some respects the borrowing powers of the States.*

I have made this statement in general terms. Details will have to be gone into by the sub-Committee. That is all I have to say, Sir.

Colonel Haksar: Lord Chancellor, When you took up Head 4, dealing with Federal finance, you told us that you intended to appoint a sub-Committee after a general discussion. I had not intended to join in the general discussion in this Committee, because

I entertained the faint hope that I might be privileged to serve on the sub-Committee.

Chairman: Yes, that will be so; so that you need not trouble very much now, Colonel Haksar.

Colonel Haksar: I have said this, My Lord, because I feel that this is a subject which even a small Committee would find it exceedingly difficult to discuss satisfactorily within a limited time; and therefore I think everybody in this connection thoroughly appreciated Your Lordship's wise decision to confine examination of Head 4 in this Committee to the general aspects of the question. A further reason why I alluded to my intention not to speak here was that, as I have listened to the speeches that have been made on the subject of Federal finance, I have wondered whether we have discussed Federal finance or whether we have discussed something which is anything but Federal finance. "Federal finance" is a phrase which results from the proposal to unite the States and British India. Therefore, if federation comes, I am sure we should have to base it upon one principle. That principle is an equitable distribution of burdens. May I say at this stage, My Lord, that the present position is not characterised by an equitable distribution of burdens. The position has never been examined. The suggestion that it should be examined has, if I may say so, been scoffed at in the past. Indeed, it has been said that, if the position were examined, it could only lead to the discovery that the States were not pulling their weight—it would lead to an addition to their liability—and therefore it was not worth while examining the question at all. My Lord, speaking from personal experience, it took the States exactly twenty years—not a day less—to have the proposition accepted that, among other things, this question of where the States stood in the economic structure of India might be examined. It was examined with certain results. I am not going to dilate upon those results here.

I have to use any odious word, My Lord; but I feel constrained to suggest that there is great ignorance as regards the part played by the States in keeping India going, from the financial side. There was actually allusion to the Butler Report this morning—to its findings and its recommendations. But, after this allusion was made, the story was completed by reference to their recommendation that the position of the States in regard to Customs might be examined. Then the story was continued, and we were told that, if a proper examination were made, it would be found that the States would have to pay at least five crores of rupees more for Defence. My Lord, in consequence of this reference, I shall first quote what the Butler Committee said as regards the responsibility of the States in regard to Defence. Then I shall venture to state my own views to the Committee on that subject. May I read paragraph 28 of the Report of the Indian States Committee?

> "The Paramount Power is responsible for the Defence of both British India and the Indian States."

It should be quite unnecessary for me to read this quotation—one would have expected that it would be in everybody's mind—but I am obliged to read it.

> "It must defend both these separate parts of India against foes, foreign and domestic. It owes this duty to all the Indian States alike. Some of the States contribute in different ways to the cost of this defence by the payment of tribute, by the assignment of lands, by the maintenance of Indian States Forces."

I now come to the relevant sentence of the quotation.

> "But, whether or not a State makes a contribution to the cost of Defence, the Paramount Power is under a duty to protect the States."

As part of the same argument, a very generous gesture was made to the States; namely, that if they would accept this liability and that liability, if they would agree to take over the debts of India when they joined the Federation, and similarly if they would agree that the revenues derived from Income-tax should be entirely retained by British India, then our friends of British India would suggest that they should discontinue paying the 74 lakhs of rupees which they pay as tributes. I am aware that, amongst my own friends, there are men who have no quarrel with the word "tribute." I hope I shall have an occasion to go into the history of these tributes and establish to the satisfaction of the sub-Committee, which is going to sit, that the application of the term "tribute" to the payments which are in the form of 74 lakhs of rupees is really the contribution of the States to Defence. But the point I am making just now is that, if that principle is applied as it has been suggested it would be applied, you cannot merely apply it to tributes only. You will have to apply it also to the ceded territories, the purpose of which was exactly what the purpose of the payment of the so-called tributes is. I should have thought that we all knew our history so well that it would have been unnecessary for anybody to point out that there was no distinction between the ceded territories and the cash tributes, and that the distinction has resulted from an accident of history.

I cannot get away from the feeling that our work has to be finished at the latest by half-past-one, and there is much to say on the subject, My Lord. But as regards the questions which you have framed under Head 4, I would merely draw attention to questions (vi), (vii) and (viii), and give my answers briefly.

Question (vi) reads:—

> "To what extent, if at all, will Federation necessitate surrender, by federating States, of rights to raise revenue

> within their territories, at any rate by "indirect" taxation—(*a*) as regards existing taxes; (*b*) future taxes?"

May I take it upon myself, speaking in terms of my knowledge of the feeling of all the States of India, to say that, so far as this question is concerned, and its various parts, the reply of the States to every part of the question is "No."

Question (vii) is:—

> "Under Federation, will there remain any foundation for a general claim on the part of the States to a share of "indirect" taxation imposed by the Federal Government, or to any profits accruing from Currency, Railways, Posts and Telegraphs, etc.?"

My reply to that question is that the position has got to be examined. It can only be partially examined by the sub-Committee which is going to sit. On principle, I should say that no claim can remain; but I am bound to point out that this position of the States can only result from the examination of the existing position.

Question (viii) is:—

> "What principles should be applied in the case of (*a*) financial or material contributions made by some States, but by no British Indian Province, *viz.*, cash payments, State Forces and territories ceded as the price of defence; and (*b*) States which at present enjoy a measure of immunity from the incidence of the Sea Customs tariff and the Salt tax?"

My reply to that question is that, if a financial structure for Federal India is to be built up, it can only be built up when these principles are settled; and consequently it is not possible even to suggest at this stage what these principles should be. These are principles which would have to be worked out either in the sub-Committee, or perhaps even later.

My Lord, I suggested a little while ago that we had hardly considered Federal finance. My reason for saying so was that, perhaps in all—or at any rate in most—of the speeches, the question of Income-tax was dealt with and it was boldly stated that, as this tax was paid only by British India, the Federal Government should not look to the proceeds of that tax for any assistance in running itself. First of all, that is not my idea of federation; but apart from that might I say that, if Income-tax is one form of contribution which British India makes, and is distinguishable from the contributions which the whole country makes in the form of "indirect" taxation, it must not be forgotten that, corresponding to the Income-tax, there are a variety of contributions which the States have been making and are still making. I may mention that income-tax was first introduced in 1860, for five years only. It was abolish in 1865, but re-introduced in 1869 for four years. There was no Income-tax between

373 and 1877. The act of 1886, which re-imposed the Income-ax, was in force for 32 years. Whereas the fortunes of the ncome-tax have been so varying, the direct contributions (as disinguished from the indirect contributions) which the States are naking to-day have been made by them since the latter half of the 18th century. Similarly in regard to Customs duties.

Time being short, I shall close by saying that the papers which you were kind enough to circulate to us—the Memoranda of the Government of India—contain much matter that is arguable; and as we have agreed that there shall be a sub-Committee, I shall be quite satisfied to discuss the points that arise out of the Memoranda in that sub-Committee.

Sardar Ujjal Singh: Lord Chancellor, The subject of Federal finance has been exhaustively dealt with in the Notes prepared by the Finance Department of the Government of India. I will only deal very briefly with the points that appear in the papers that have been circulated.

In answer to point No. (i), I agree with my friends on this side, and with the Note prepared by the Finance Department of the Government of India, that there should be a single Federal Budget; but in the charges thereon, a *pro formâ* distinction should be drawn between those which are truly Federal charges and those which ought to be borne by British Indian tax-payers.

With regard to point (ii)—Public Debt—there is no dispute that, in future, the Public Debt ought to be Federal, and that there will be no necessity for any borrowing for the purposes of "Central" subjects. With regard to past debts, there is bound to be a difference of opinion. I agree, however, with the proposals of the Finance Department of the Government of India that there may be a budgetary distinction; but the liability for past debts remains a charge on the whole of the revenues of India. In this connection it is important to bear in mind the remarks of the Finance Department on page 6, in which they say:—

> "It is suggested that it would be much simpler if the 'Central' share in the pre-Federation debt were fixed as a definite capital sum, bearing a definite rate of interest at the time of the inauguration of the new Constitution, which would be reduced each year as the capital is repaid by the 'Central' share in the Reduction of Debt provision."

With regard to point (iii), I agree with the Government of India, Finance Department's proposal that revenue and expenses of the non-Governors' Provinces should be entrusted to the Federal Government. If the North-West Frontier becomes a Governor's Province, undoubtedly then the revenues and expenditure will not be entrusted to the Federal Government, but will be directly in charge of the Provincial Government.

With regard to point (iv), primarily the Federal Government's resources would be "indirect" taxation, and the Provincial sources

would be "direct" taxation; but it is true that the existing sources of "indirect" taxation will not be sufficient to meet the requirements of the Federal Government, and that we may have either to resort to further "indirect" taxation, or to "direct" taxation—of course, with the consent of the States.

Coming to the point of Income-tax, as I have said, if Income-tax cannot be a Federal subject—cannot be a source of Federal revenue—it will certainly have to be the chief source of "Central" revenue to meet the charges of the "Central" subjects. But I am of the opinion that Income-tax rates ought to be uniform throughout India, and that, for that purpose, the Income-tax rate ought to be fixed by the "Central" Authority, and that it should continue to be collected by a "Central" agency. Over and above that rate, however, the Provinces should have the freedom to levy any surcharge up to a limit to be fixed.

Turning to point (vi), it would be to the interests of India as a whole if inland Customs were to be abolished in those States where they exist; and in no case ought inland Customs to be allowed to be levied, either by the Provinces or by the States. Where inland Customs do exist, in my opinion, some arrangement ought to be made to do away with them and to compensate those States.

Coming to point (vii), there can be no question of States claiming a share in "indirect" taxes. When we are having a Federal Government for the whole of India, in which the States are going to have their full share with the British Provinces, then "indirect" taxes will be the chief source, if not the only source, of the Federal Government's revenue. So there can be no question of the re-distribution of such revenue between the various Units. It may be that we may implement our resources by "indirect" taxes. We may levy Excise duties or Import duties on some other articles. We may raise our sources of revenue by "indirect" taxation, and there may be a surplus; but that surplus will have to be equitably distributed amongst the various Units of Federated India, and not among the States alone.

As regards point (viii), I think it is quite reasonable that State tributes ought to go. They will be an anachronism in a Federal India, but for the purposes of Federal finance no account should be taken of the maintenance of State Forces. State forces need or need not be maintained, and their cost ought not to be taken into consideration. If we take into consideration claims in regard to ceded territories, I do not know where it will land us, and I hope this question will not be pressed.

With regard to Maritime States, and border States like Kashmir, there ought to be some provision made for those States bearing their share of the burden of Federal taxation. If "indirect" taxation is going to be the only source of Federal revenue, then the Maritime States, and the border States like Kashmir, will be contributing nothing to the Federal purse; so, if they want to have that immunity which they enjoy at present, then some other source of

revenue will have to be found by which they will be contributing their quota towards the Federal revenue.

Coming to point (ix), I am strongly of the opinion that there ought to be a control over Provincial borrowing by the Federal Government. Of course, the borrowing by Provincial Governments on the credit of their own revenues, and to a limited extent, should not be so restricted as it has been in the past. I agree with the proposal that there ought to be set up a Board of Loan Commissioners, which Board is to control borrowing throughout India.

With regard to the last point, I agree that the Provincial Balances, for the present, should be kept with the Government of India, till the Reserve Bank is set up.

Sir Mirza Ismail · Lord Chancellor, I know that you are all getting impatient, and I promise you that I shall not detain the Committee for more than a few minutes.

The following are, in my opinion, some of the main principles to be kept in view in framing a scheme of Federal finance for India:—(1) Internal trade barriers should be avoided as far as possible. This is doubtless the ideal to be aimed at, but, in view of existing rights, cannot obviously be insisted upon; (2) The authority entitled to the proceeds of a tax should impose and collect it by its own agency. In other words, legislation, administration and proceeds of taxation should be vested in the same authority as far as possible; (3) As a rule, Federal taxes should be "indirect" and Provincial taxes should be "direct"; but this would be subject to the following conditions:—(*a*) "Indirect" taxation having social as well as revenue objects, for example, Excise on Alcohol and Narcotics, should belong to the Units of the Federation; (*b*) "Direct" and "indirect" taxation should be co-ordinated, so that the scheme of taxation viewed as a whole may be well balanced.

Applying these principles, the distribution of resources between the Federation and the constituent Units would be somewhat as follows:—*Federal:* Maritime Customs; Excise on articles such as Salt, Kerosene, Petrol, Matches; Currency and Mint. The constituent *Units:* Land revenue; Income-tax; Excise on Alcohol, Tobacco and Narcotics; Stamps; Forests; and other items. It may be urged that the Federal sources enumerated above may not be sufficient to meet the present scale of Federal taxation, not to speak of margin necessary for emergencies. I would, therefore, tentatively suggest the assignment to the Federation of some such impost as a Corporation tax, that is, a sur-tax without refund on profits of Companies. As joint-stock enterprise develops, this will mean an important source of Federal revenue. It may be urged that this would be a form of "direct" taxation; but a tax of the kind suggested is essentially one in respect of which uniformity is required throughout the country. If additional sources are found necessary for the administration of Federal subjects, I think that such an exception from the general principle, that Federal taxation should be "indirect," would not be open to serious objection.

This would, of course, be subject to necessary financial adjustment in the case of particular Units.

I am only giving expression to some general principles, which should be kept in view in any scheme of Federal finance for India. I do not say that they could all be adopted immediately without causing serious dislocation of existing arrangements. The question is one which has to be examined in detail by experts. There is, however, one matter in which action cannot be postponed any longer on any consideration of mere expediency. I refer to the contributions from some Indian States under the name of "tributes," an expression for which has since been substituted a less offensive term. The change of name, however, only conceals, while it does not remove, a grave injustice done to the people of the States. It is recognised on all hands that the contributions are not only burdensome, but inconsistent with the status of equality of Units which a Federation presupposes. May I read out to you a sentence or two from the Memorandum of the Government of India on this subject? They say:—

> "It has further to be remarked that the objections of States to continuance of these payments would not be based solely on the plea of their being supplementary to the ordinary scale of contributions by Federal Units. There is the equally cogent plea that these payments denote relations of a feudal character, and that the States will admit no such relationship between themselves and the Federal Government."

This being the accepted position, I am surprised that a proposal should have been put forward that the contributions should be continued until such time as the condition of Federal finances should permit of their abolition. I should be failing in my duty if I did not express my view that such a proposal would cause the people of the States serious misgiving. They would have no faith in a constitution which made the perpetration of an admitted iniquity an element of its financial system. I would, therefore, plead for the immediate abolition of the contributions. They should have disappeared long ago. Under present conditions they are an anachronism. In future conditions they will be a contradiction. The Committee will pardon me if I speak somewhat strongly upon this subject. They will remember I am sure, that Mysore suffers greatly. It pays 24½ lakhs, or more than one-third of the total head of contribution shown in the specimen Budget. It is locally regarded, and, I hope, generally recognised—to use the words of the Memorandum—as a crushing burden.

I am happy to be able to conclude this part of my speech upon a hopeful note. His Highness The Maharaja of Mysore, I know full well, would wish me to express, in the name of his people, as well as his own, their gratitude to those of my friends on the other side of the table who have given such a tangible expression of the sympathy with which they view our desire for the removal of this real and undoubted burden.

As at present advised, I am inclined to favour the States joining, on a voluntary basis, in a scheme of co-ordinated public borrowing, such as that outlined in the Memorandum The other important questions dealt with in the Memorandum, including the classification of debt and other charges as Federal and "Central," will require, and I have no doubt will receive, detailed examination at the hands of the sub-Committee.

Chairman: The Federal Structure sub-Committee on Finance will meet at 2-30 on Monday You will be very thankful to hear that Lord Peel has accepted the chairmanship of that sub-Committee. I just want to say this. I hope that soon the British Parliament will be engaged in discussing this question, and therefore I am very anxious that we should have on this Finance sub-Committee men who will have to explain it when it comes before Parliament. I think it is very important, therefore, that we have got Lord Peel, because, in the House of Lords, when a Bill comes on, he will have been all through it and will be in a position to explain it. With regard to the sub-Committee, I have made enquiries from all the various groups, and Their Highnesses have suggested the four that we are going to appoint for them. Sir Akbar Hydari, Sir Mirza Ismail, Colonel Haksar and Mr. Krishnama Chari. For the British Indian group, we are going to appoint Mr. Benthall, Sir Maneckjee Dadabhoy, Mr. Iyengar, Sir Sayed Sultan Ahmed and Dr. Shafa'at Ahmad Khan Major Oliver Stanley, M.P., will be a member; and, with regard to the two financial experts that I suggested to you, I am very glad to say that we shall have on this sub-Committee two men with experience as Financial Secretaries to our Treasury—Mr. Pethick-Lawrence, who was the Financial Secretary to the Treasury in the Labour Government, and Major Elliot, who is the Financial Secretary to the Treasury in this Government I am very thankful to say that they are members of this Committee, and that they can both come on the sub-Committee. We have thus the advantage that, when this matter does come before Parliament, we shall have in the House of Commons, to explain it, Major Oliver Stanley, Major Walter Elliot, and Mr. Pethick-Lawrence. That will be a great advantage to us. And we shall have Lord Peel in the House of Lords.

With regard to the terms of reference I do not think there is much difficulty. They are as follows:—

> "To appoint a sub-Committee to examine and report upon the general principles upon which the financial resources and obligations of India should be apportioned between the Federation, the British Indian Units jointly and severally, and the States Units."

I hope very much that the Committee will be able to finish its work in a very short time.

(The sub-Committee adjourned at 1-30 p.m.)

PROCEEDINGS OF THE THIRTY-FIRST MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON MONDAY, 5TH OCTOBER, 1931, AT 11-0 A.M.

Adjournment.

Chairman: Your Highnesses and Gentlemen, The notice convening this meeting of the Federal Structure Committee is in the following terms:—

> "The Committee will meet on Monday, 5th October, at 11 o'clock in the Drawing Room, St. James's Palace, instead of at 11-30 as previously arranged. It is understood that a proposal will be made on behalf of some members participating in the informal discussions now proceeding on Minority questions that the Federal Structure Committee should adjourn in order to make sufficient time available for these discussions."

Does anybody wish to say anything on that?

Pandit M. M. Malaviya: I propose that this Committee should meet next Friday, in order to give further time for the discussions that are going on in the Minorities Committee.

Chairman: You think that that will make sufficient time available for the discussions.

Now, Pandit Malaviya, I quite see that point. Of course, as far as we are concerned, we are here with all our information and all our staff and I do not know how many alternatives, and we are not only willing but we are ready to go on now: but I quite appreciate your difficulties, and if you desire a little delay, by all means, I think, subject to what anybody else says, you ought to have it. But I am sorry for the delay, because we are very, very anxious to push on, and I rather gather that some of you think that you would like to return to India some time this year.

It has been proposed by the Pandit Malaviya that we should not meet until Friday. Has anybody anything to say about that?

H.H. The Nawab of Bhopal: We have no objection.

Chairman: Sir Akbar?

Sir Akbar Hydari: No objection. We want to meet the wishes of the party opposite.

Chairman: I had hoped for a very long day to-day; but I do see that every opportunity ought to be taken to settle this difficult question. I am only going to say one thing. Personally I am getting a little tired of debates; I want decisions. I am quite sure you will help to get decisions; and, if a little delay will contribute to a satisfactory settlement of this question, nobody will be more pleased than I shall be.

Mr. Jinnah, have you any point on this?

Mr. Jinnah: No, Sir.

Chairman Sir Muhammad?

Sir Muhammad Shafi No, Sir.

Chairman Very well—11 o'clock on Friday; but I think that must be peremptory I think we really *must* start. I am sorry for the delay, but I must say I think you are justified under the circumstances in asking that the proceedings should be delayed for a short time

(*The Committee adjourned at 11-14 a.m.*)

PROCEEDINGS OF THE THIRTY-SECOND MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON FRIDAY, THE 9TH OCTOBER, 1931, AT 11-0 A.M.

Adjournment

Chairman Your Highnesses and Gentlemen, Before we proceed to any discussion this morning, I would ask your permission to make a few remarks on the situation in which we find ourselves. We are all naturally disappointed that the Minorities Committee has failed up till now to reach a final agreement on the difficult problem which was referred to it; but I, at any rate, am not dismayed—I am not even downhearted. On the contrary, in my view the situation is excellent, for we are all determined that this Round Table Conference shall not fail, and that this Federal Structure Committee shall continue its work and bring it to a successful conclusion.

If we failed we should be the laughing-stock of the world But there is something far more serious and far worse than that What is to happen in India if we are not successful? I shudder to think.

In a few weeks' time you will be returning to your own delightful country, and your friends will meet you as you land at Bombay. They will ask you "What have you brought back for us?" Is your reply to be "Nothing?" They will ask you "What have you done;" and is your answer to be "We have done nothing at all?" My friends, you have come thousands of miles to attend this Conference. I know—for many of you have honoured me by your confidence—that many of you are here at great personal inconvenience and great professional loss. Have you made all these sacrifices merely to persist in disagreement? Believe me, there is not an Englishman here who is not longing to help you and to see India a nation, with all its classes and all its communities dwelling together in unity, and with their leaders (many of whom I see before me) joining together to ensure the happiness of 350 million men and women. If any member of this Committee had only himself to consider, he would be at liberty to walk out of this room and go for a well-earned—and may I add in respect of many of you—a much needed holiday. But we are not at liberty to consider ourselves only. Upon our remaining here and coming to

it is an ill wind that blows nobody good. I thought to myself last night: "I am not sorry that they are over here during a General Election, because they will soon be having a General Election themselves in India, and they will know a little about it." For example, some of you will know exactly what to call each other for three weeks. And, if one distinguished member will allow me to say so, I am looking forward with great interest to receiving a copy of the "Hindu" with the first leading article on the state of parties at the first Indian General Election. I hope it is not all a waste of time, therefore

Now, I am going to suggest this. The subjects we are going to discuss you cannot discuss as tired men, and I do not think it is much use going on very far, if at all to-day. But I have a piece of good news for you Thanks to Lord Peel and the other members of the Finance sub-Committee, they have just signed what is in effect a unanimous Report. Just when things look pretty bad, it is a great thing to think that there is something which is all right.

I think the best thing to do, subject to what you say—because it is a matter for you—is that we should take that Report on Tuesday. I will get it circulated to-morrow, and if you take my advice you will not look at it on Sunday. We can discuss it on Tuesday, and we have the advantage here of a very distinguished expert sitting next to Sir Muhammad Shafi (Sir Purshotamdas Thakurdas), who is just in time to help us with some deliberations on that Report; and that Report is a very big step forward.

The next thing I would suggest is this. I do not know how long that will take, because the matter is a difficult one and I should like to hear opinion on it, but I am very anxious to get this next—I am very anxious to get the Federal Court settled, because I think that, if we get that on to good sound lines, it will be a very great help in the determination of many questions which I do not want to go into at present. I will circulate, if you will allow me to do so, on Monday, a document about a Federal Court, so that when we have finished the Finance question we will at once get on to the question of the Federal Court, and when we have finished the Federal Court we will get on to all those questions—and there are a good many of them—in the document I have circulated to you, which are really not affected to any extent, if at all, by the communal question.

Now, in that sort of way we shall be able to make very considerable progress, and during that time you will be discussing other matters; but, if I may again advise you, the sort of thing I would advise you with regard to minorities is to concentrate for a while, not on what the settlement is to be, but on what way the settlement is to be obtained. I do not want to discuss that now—I know perfectly well the suggestions which have been put forward, and so on—and I think in that sort of way we can continue our deliberations.

The General Election will not make any difference. We will sit here, and after this short rest and short adjournment go on in

the breaking point; and when parties had discussed things again and yet again, they met and brought about a settlement. If we are serious about our business, and if there is any earnestness about it, I think that we owe it to ourselves, we owe it to our country, and we owe it to yourselves, that we should again seriously tackle this problem; and, if we can present you with an agreed settlement on this question, I do not think that there is anything better to hope for. Supposing that we are unable to come to an agreed settlement on the various questions that divide us, we should at any rate be able to arrive at a settlement as to the method by which we have got to approach this question.

I will not discuss the question of the method at all, as I do not wish to prejudice any ideas upon that particular question. Of one thing I am quite clear. Every one of us realises, and ought to realise, that the failure of this Conference means a disaster to us in India. A state of things which I dare not contemplate may supervene the failure of this Conference, and probably many of us must revise, under the necessity of circumstances, our pre-conceived ideas. I believe that every one of us holds his conviction very dearly; but, when the question of settlement arises, I think that we have to revise many ideas on the question. I do still hope that, notwithstanding the disappointment that has arisen on account of the failure of our work there, we shall be wise before it is too late. It does not matter to me whether those who are here are here in a representative capacity or in any other capacity. We are capable of arriving at a settlement. Surely the men who have assembled here, if I may very modestly and humbly say it, represent some of the best elements in my country; and it will be a serious reproach to us if, at the end, we have got nothing to say but that we have tried again and we have failed. In that spirit I am prepared to support the suggestion that our work should go on uninterruptedly. What particular head we shall take first, and what particular head we shall take next, is a matter which I should leave absolutely to your discretion. So long as our work takes us one stage further towards the completion of the work, I should be satisfied. I have nothing more to say.

Mr. Zafrullah Khan: Lord Chancellor, Sir Muhammad Shafi, on behalf of the Muslim Delegation, has already expressed our willingness to co-operate in the work of this Committee to the extent to which you have outlined the immediate feature stages of the work of this Committee. Mr. Gandhi has made an appeal that, when we express our views with regard to the programme of the work of this Committee, we should have no mental reservations. It is only in order to avoid any misunderstanding at any subsequent stage that I, on behalf of the Muslim Delegation, desire to supplement what Sir Muhammad Shafi has said.

We consider that, so far as some of the very outstanding questions are concerned which have to be dealt with by this Committee, it would be impossible to enter upon any discussion of them so long as the question of the Safeguards for the minorities is still pending,

and the principles of that question have not been settled. It is not in any spirit of resentment or irritation or obstruction that we wish to make that submission. It is because we feel that, under those circumstances, we would not be able to give any assistance whatsoever towards the solution of these questions that we take up that position. All that we would be able to do in that case, if you called upon us, Lord Chancellor, to express our views with regard to those questions, would be to say something like this: "If *this* is secured, and *this* is guaranteed, and *this* is not interfered with, and *that* is not moved, and *that* is brought a little nearer, then we think *this*." We should have to say "If any of *these* factors is changed, then we think otherwise; and if there is any change in *that* direction, then we think in another fashion." I leave it to you to appreciate what kind of help we would be rendering to you in that case. I believe we would only be adding to the difficulties and perplexities of the question rather than contributing towards its solution.

That being so, I must make it perfectly clear that our willingness to continue to participate in the work of this Committee with regard to the two stages at present outlined by you, Lord Chancellor, is based on the desire that, while we are still considering the question of the Safeguards for minorities, we should not lose, as Mr. Gandhi has said, a single minute of the time

Nobody can say that the question of Federal finance or that the question of the Federal Court is a whit less important than any of the other questions which this Committee has to consider We feel we can go on with the discussion of those questions, inasmuch as no aspect of those questions does in any way affect the communal question; and if, by the time we have finished with the discussion of those questions, we can discover any other topic which is to the same extent entirely free from communal considerations, we would be willing to go on with the consideration of any such questions.

It must be realised, however, that the moment we were faced with a question which, directly or indirectly, involves or affects any communal consideration or any rights of or Safeguards for the minorities, we would not be able to discuss that question or make any contribution towards its solution until at least the principles of the Safeguards for minorities and the safeguarding of various interests have been settled to the satisfaction of the different interests and, so far as we are concerned, to the satisfaction of our Delegation.

With regard to this I might draw the attention of this Committee to what was said yesterday by Sir Muhammad Shafi in the Minorities Committee with reference to a remark that fell from Mr. Gandhi that the decision of the minorities question may be left for settlement by a judicial commission. With reference to this remark, Sir Muhammad Shafi observed that, in making this remark, Mr. Gandhi overlooked one vital factor in the question, and that was that no constitution could be framed—let alone that the constitution as framed should contain a provision as suggested by

Mr. Gandhi—till this question was settled. Let me also draw the attention of the Committee to one or two observations which the Prime Minister made in the Minorities Committee on this question:

> "There is another point I want to put to you. Will any of you tell me, quite honestly, that the continued existence of this problem unsolved can be overlooked either by yourselves if you were drafting your own constitution or by His Majesty's Government if it were trying to draft a constitution for you? I bring you up against facts. You know perfectly well—especially every one of you who has been in public life and has faced the practical problems of public life—you know perfectly well that whilst this problem is unsolved it puts an enormous obstacle in the way of constitution making for India, not simply because that constitution must be drafted by His Majesty's Government under present circumstances, but supposing I said to you on behalf of the Government, and supposing Parliament agreed, 'Take the business over to yourselves,' why, you know perfectly well that you could not go six inches without coming to a deadlock."

That is perfectly true.

May I wind up by submitting that, at one time, the importance of the solution of this minorities problem was considered so vital by Mr. Gandhi himself that, at a meeting at the Viceregal Lodge, towards the end of March, Mr. Gandhi expresssed the opinion that this was not only a very vital question, but that, without its solution, it would be impossible for him to take any part in this Conference. It is only a spirit not to obstruct in any way the work of this Committee, so far as it is possible to do so without giving opinions on matters which would be of no value whatsoever, that we could proceed on those lines; and, so far as those questions are not touched, we shall give all the co-operation and all the assistance that we can in your work.

I thought it was best to make it clear to what extent we can proceed with the work.

(*The Committee adjourned at 11-45 a.m.*)

Proceedings of the Thirty-third Meeting of the Federal Structure Committee held on the 13th October, 1931, at 11-0 a.m.

Head 4.

Distribution of the Financial Resources between the Federation and its Units.

Discussion on the Report of the Federal Finance sub-Committee.*

Chairman: Your Highnesses and Gentlemen, The business which is before us to-day is the discussion of the Report of the

---

* The Report of the Federal Finance sub-Committee is printed as an Appendix to the Third Report of the Federal Structure Committee.

Federal Finance sub-Committee; and, before we begin this discussion, I am sure you will agree with me that we ought to tender our thanks and our congratulations to Lord Peel and the other members of the sub-Committee for producing for us, at rather short notice, such a very clear and lucid Report. I think that they have greatly helped on the business which we have in hand.

Lord Peel: Lord Sankey, I formally present the Report of the Finance sub-Committee to the Federal Structure Committee. At this stage there are not many observations that I wish to make, because I hope I may assume that most of the members of the Federal Structure Committee have read the Report, and I will proceed on that basis.

There are just four points on which I should like to comment. The first is the paragraph at the end about the Expert Committee or Committees, because it may be thought that a good many subjects for investigation have been left over for this Expert Committee. That must necessarily be so, because, even in the fortnight during which we were sitting, we had really to hustle over these very large subjects at a very great rate, and there are a very large number also of detailed matters which would have taken us months and months to examine, and, indeed, which we were really not in a position to examine, because we had not got all the necessary material before us. I should like to explain what the sub-Committee meant by an Expert Committee. When they said an Expert Committee they meant an *expert* committee; that is to say, our advice was that it should not be what is called a representative committee—representative of different interests, and so on—but that it should consist of people who were expert in these particular subjects, working under the general directions that we have proposed to give them, but dealing in the most cold and impartial manner possible with the facts and figures which they have to examine.

The second point on which I wish to comment is the question of the taking over of the debt by the Federal Government. Of course, from the point of view of the outside creditor and the general credit of India, this is of very great importance; and we wanted the new Federal Government to succeed to the old with the least possible jolt, as it were, to the credit of India. Now, the question of the fairness of its being taken over by the Federal Government is examined, of course, in the Report; and we comment on and criticise, if we may do so, the method that the Government of India has adopted of merely trying to size up or weigh up some of the assets and balance them against the whole of the debt. It is quite obvious that that method is really an unfair method and does not give sufficient credit for the large assets that are held in India against the debt. It is a very remarkable thing, but I think, when the matter is properly gone into, it will probably be found that India actually holds assets which come very nearly to the amount of the debt, if not entirely—if they do not meet the whole of the debt. That is a most remarkable situation: it is quite

unparalleled, I believe, in any other country in the world. And perhaps I may be allowed respectfully to congratulate the Princes and the States for coming into so splendid an inheritance. It may be found, of course—and we allow that loop-hole—that there are certain portions of the debt (possibly small matters, like a share of pre-Federation pensions, and the question of some of these "Central" Departments), which ought to fall on "Central" as apart from Federal revenues. but the point on which I want to lay stress, of course, is that this is a purely domestic matter. It is a matter between the Federation and, as it were, "Central" revenues; and, while we suggest that any balance over, either of interest or sinking fund, should fall in the first instance upon the Income-tax or other purely "Central" taxes, yet, from the point of view of the outside world, the debt is taken over by the Federal Government. This, as I say, within the Federal Budget, is a purely domestic matter to be adjusted between the Federation and the Provinces. That seems to me to be a matter of very great importance indeed.

The third point on which I should make an observation is the question of the division of the taxes and of the sources of taxation between the Federal Government and the Provinces and States. I think I may say, without disrespect to the sub-Committee, that at first they showed a tendency to take all the fat, all the good joints for the Provinces and the States, and leave rather a meagre fare for the Federal Government. I think perhaps this was natural, because we had representatives, of course, of the Provinces and representatives of the States, but we had nobody to represent the Federal Government, the Federal Government, of course, not being in existence. Few are the champions of unborn children; and that doctrine was certainly illustrated in the sub-Committee. But I think, after further consideration, the sub-Committee did very much better than might otherwise have been done for the Federal Government; and the Federal Government, though it started rather leanly, is much better endowed than perhaps might have been expected. I lay great stress upon this point because, for three main reasons, you must give a good deal of financial elbow-room to the Federal Government. The first is that, though it may have a restricted number of powers, yet within those powers and in the exercise of those powers it ought to be paramount. Secondly, it has the great duty cast upon it of defence, with all the emergencies that may arise out of that consideration. And, thirdly, it is, as you see, really responsible for the general credit of India; and the proposals we make for loans, especially external loans, being raised through the Federal Government, make it of importance that you should not restrict too closely the resources of the Federal Government. Otherwise the creditor perhaps will examine the thing rather closely and may be tempted to ask a higher rate for his loans. Summarising, therefore, our attitude very generally besides the Customs, which of course must necessarily fall to the Federal Government, we have made proposals about Income-tax, about

Corporation tax, and another point on which I lay some stress, that is to say the possibility of not too difficult amendment of the constitution in respect of some of these financial provisions. We must not tie it up too closely. That is only a suggestion, because it was rather outside our province. Then, in paragraph 16, we discuss the question of contributions from the Provinces in order to start the Federation on a little stronger financial basis, with the suggestion that these should die away within a certain limited number of years. We also want to add a little flexibility to the finances by suggesting the possibility of grants from the Federal Government to the Constituent Units, and conversely we suggest that there should be a possibility of grants by the Constituent Units to the Federal Government. I am a little sceptical as to how far that will be a prolific source of revenue in practice, but it is one which might fairly be put forward. Then, of course, there are the emergency powers which must exist in the constitution should any serious difficulty arise. Just two points upon that. We discussed at some length the question of the division of these taxes Sometimes they fell on one side of the line and sometimes on the other. I cannot say we were always in agreement as to which side of the line they should fall. If I may express rather my individual view, I should have preferred that the commercial items should go to the Federal Government; and, as regards the Excises, you will notice that it is open to doubt whether "Narcotics" for this purpose should include Tobacco, and I myself would have hoped that the Tobacco Excise should not be included among "Narcotics." I think the result of all this is that the Federal Government is far better endowed than it was when it started.

The last point on which I wish to say a word is this. We were always met with the great difficulty that we had not a clean slate to start from, and we had to adapt ourselves and our views to the existing situation in a large degree That, of course, was quite evident in the case of the relation of the Federal Government to the States. We have tried to get the largest degree of free trade we could within the conditions of India, subject to the existing situation, and we have suggested that transit dues should be forbidden, while we know that the Provinces do not charge internal Customs The States, however, do; and the States took up a strong attitude about the impossibility of doing away with their internal Customs, although it is obvious that they might to some extent affect the Customs levied by the Federal Government. But that is one of those things that cannot be altered, and I think the sub-Committee were quite clear, after examining the situation, that, to ask the States to wipe out at one swoop their internal resources of taxation, would simply paralyse the Budgets of the States and make it quite impossible for them to carry on. In that connection you will see how we have dealt with the question of the State contributions. On the one hand, we should be inclined to say that they are connected with a historical situation that no longer exists, and should

not be carried over to the new Federation. They are very unequal in their incidence, and cannot be said to be a fair contribution from the States to the Federal Government. Well, of course, it will be very nice to wipe out the whole thing by one stroke of the pen; but it is difficult to lose revenue in that way, and we have made various suggestions about a percentage reduction in the case of the more heavily charged States, and further proposals for the future abolition of these charges.

We have tried to observe, throughout our operations, three principles. First, we have had to start as practical men from the existing state of things. We could not construct an ideal state to start with. Secondly, we recognise all through that, though we are a finance committee, finance must be the servant and not the master of our operations. Thirdly, we have done our best to harmonise financial operations with the main lines of constitutional policy which are being laid down by the Federal Structure Committee. Those are our principles; and that is all I have to say at this point.

There is one other matter, however, which I should like to interpolate. The sub-Committee laid one duty on me which I have not discharged, and that was to express in the Report our thanks to our Secretaries, who worked so very hard. I was told that I could not do that because it was unprecedented, and so I will take the opportunity of saying it now and thus escape the precedent difficulty.

Sir Purshotamdas Thakurdas: The Report of the sub-Committee is unanimous, and to that extent I am sure that it is particularly welcome to this Committee. I should like, if I may, to make a few general remarks before I go on to deal with some of the details. The Report deals with a difficult subject which requires careful elucidation of important underlying principles. Happily in regard to this question there are no special vested interests, liable to challenge, which have to be nursed. There is no conflict with Great Britain, and there are no sectional prejudices either. It, however, requires constructive ability and outlook of a high order to foresee the difficulties which must develop, and which will have to be faced before long, if the Federation of British India and Indian India—both sons of the soil and both interested equally in the Motherland and her progress and credit at home and abroad—is to march onwards to the goal of a powerful unit in the British Commonwealth of Nations. The sub-Committee, therefore, may rightly be congratulated on their broad vision and general spirit of avoiding encroachment on the views of either side in framing their Report.

Of the various important recommendations made by the sub-Committee, the one which is most outstanding is their suggestion that the field of enquiry should be divided into two parts, and that two Expert Committees should be appointed to deal with those two parts. The questions to be referred to them are of a most com-

plicated and even, in some cases, delicate nature. It is to be hoped that this Committee will accept the Report with a strong recommendation that the personnel of the two Expert Committees should be such as will inspire full confidence, and that the Reports of those Committees will be accepted as giving a good start to the machine of Federal finance These men must be experts, as far as possible, in the various questions involved—men who will, without fear or favour, decide the questions unbiassed and in as practical a spirit as possible.

I should like to make a few observations about some of the important details which require notice here. In paragraph 6 there is a sentence which requires special notice. It is the last sentence of the first sub-paragraph. The Report says:—

> "No classification of pre-Federation debt as 'Federal' and 'Central' for constitutional purposes could be contemplated of such a kind as to affect the position of the lender."

This is in marked contrast with what is said on page 5 of the Memorandum of the Finance Department of the Government of India, where it is observed in paragraph 11:—

> "It would therefore be correct, if any such distinction were made, to regard the main portion of the Sterling Debt as a Railway liability to be assumed direct by the Federal Government. In any case it will make for simplicity if Central's liability to Federal is recognised as a wholly rupee liability."

I have no doubt that the observation in the Memorandum of the Government of India is incorrect; and I would venture to say it was uncalled for and, unless challenged, may lead to complications.

Whilst on this subject of pre-Federation debt, I must observe in passing that the acceptance of the Report of the sub-Committee does not prejudice the broader question of an investigation of the liability of India for the whole of what is called the Public Debt of India. That is a separate issue and has to be considered on its own merits. There are those who hold strong views about this matter, and they must not be considered to be affected by the acceptance of this Report. In fact, I would suggest the addition of the words "taking this term in its wider sense" to the last line but five on page 5 of the Report. That, I think, will at least bring out the difference, which I think is very pertinent to the two considerations, namely, the question of debt in this Report and the broader question to which I have just referred.

In paragraph 13 of the Report, Transit duties, whether in the Provinces or in the federating States, are forbidden, and similarly the Provinces are debarred from levying internal Customs. This should be welcome to all. Transit duties in the Provinces and federating States would involve the negation of federation As regards internal Customs, it can only be hoped that the States before long will come into line with the British Indian Provinces.

Federal authorities, and that that Federal authority will give effect to those recommendations, then you will have to provide for the interim period for which, in fact, you have not in this Report made any provision. There was a provision of that sort in the South African Constitution, where a similar procedure was adopted. You will have to come to some arbitrary arrangement for the interim period.

Mr. Iyengar: That is a matter for this Committee.

Sir Tej Bahadur Sapru: But I should have expected a recommendation of this character.

Sir Provash Chunder Mitter: I am grateful that Sir Tej Bahadur Sapru's questions have cleared the matter up a little. When I read this Report, I thought the intention was to appoint the Expert Committee at once. If the constitution is so framed that the future Federal Government will have a certain amount of elasticity in dealing with this matter, that is a point of substance. If, on the other hand, it is found that the constitution is such that that degree of elasticity will not be present, then I submit it is desirable that the representatives should have a say.

May I respectfully point out, moreover, that, as distinct from other Federations, for example the South African Federation, there is a new element in our Indian Federation, namely, that the Indian States are coming in; and we are proceeding on the basis that the system and incidence of taxation will perhaps be different from that which it has been in the past. In the past the Central Government had, for example, the Income-tax; but, in the future, that should not be the case with regard to the Federal Government. Their Highnesses have told us that they are not willing to have that tax imposed on the subjects of their States, and therefore it may be necessary to consult the representatives before you draw up the constitution. It may be possible, however, to give the necessary elasticity; and then I have not the slightest objection to the future Federal Government dealing with the matter. But my point is that, at some stage or other, the people's representatives should be given an opportunity to express their opinion. There is, therefore, really no difference of opinion on the substance.

Chairman: Will you please look at paragraph 4? Mr. Gandhi has kindly pointed this out to me. It is on the first page, and is headed "Conditions of the Problem." Perhaps you will read out the second sentence, which begins with the words "Any theoretical scheme." Do you mind reading that out?

Sir Provash Chunder Mitter: It is as follows:—

> "Any theoretical scheme for the division of resources and obligations should, before being embodied in the constitution, be put to the test of a careful examination of its probable results by some body which is fully equipped for the task."

Chairman: Do you agree with that or disagree with it?

Sir Provash Chunder Mitter: I agree.

Sir Tej Bahadur Sapru: Without making any speech, may I just be permitted to refer to section 118 of the South Africa Act of 1909, on which, more or less, was modelled clause 72 of the Nehru Constitution. That is what I have in view. I am only drawing the attention of the House to that.

Chairman: What number is it in the Nehru Constitution?

Sir Tej Bahadur Sapru: Clause 72; and section 118 of the South Africa Act of 1909. May I, with Your Lordship's permission, read it for the information of the Committee? Section 118 of the South Africa Act of 1909 runs as follows:—

> "The Governor-General in Council shall, as soon as may be after the establishment of the Union, appoint a commission, consisting of one representative from each province, and presided over by an officer from the Imperial Service, to *institute an inquiry into the financial relations* which should exist between the Union and the provinces. Pending the completion of that inquiry and until Parliament otherwise provides, there shall be paid annually out of the Consolidated Revenue Fund to the administrator of each province—
>
> (*a*) an amount equal to the sum provided in the estimates for education, other than higher education, in respect of the financial year, 1908-09, as voted by the Legislature of the corresponding colony during the year 1908;
>
> (*b*) *such further sums* as the Governor-General in Council may consider necessary for the due performance of the services and duties assigned to the provinces respectively.
>
> Until such inquiry shall be completed and Parliament shall have *made other provision*, the executive committees in the several provinces shall annually submit estimates of their expenditure for the approval of the Governor-General in Council, and no expenditure shall be incurred by any executive committee which is not provided for in such approved estimates."

Some such provision, I submit, having due regard to the fact that the Indian States are coming in, will have to be made in the constitution in order to get over the interim period.

Chairman: What about Section 74 of the Nehru Report?

Sir Tej Bahadur Sapru: Section 74 is simply this:—

> "Pending the completion of the said enquiry, and until Parliament has taken action under Clause 68, the existing *sources of revenue* and the financial relations shall continue to be in force."

Section 74 and Section 72 really are based on Section 118 of the *South Africa Act. The idea was borrowed from Section 118 of the* South Africa Act.

Chairman: Then what happens till that Committee has reported? Do things go on as they were?

Sir Tej Bahadur Sapru: Well, until that Committee has met and reported, the Governor-General in Council must be vested with certain powers to get over the period of transition. Otherwise the whole thing will be held up.

Chairman: Would you give the Committee a time limit, or would you make it like this Committee?

Sir Tej Bahadur Sapru: Well, I fancy that the task that you are entrusting to these two Expert Committees, suggested by Lord Peel, will be a very heavy and a very onerous one; and it will require very careful examination of the accounts and of the systems prevailing in various Indian States and in various Provinces. I think you should be prepared at least for one year. For the first year of the constitution, you will have to make a provision of some sort or other in order to carry on the administration from day to day; and the recommendations of this Committee can only come into effect after the first year, when they have been laid before the Legislature and approved by the Legislature.

Chairman: And it would be for the new Federal Government to appoint the Committee?

Sir Tej Bahadur Sapru: It will be for the new Federal Government to appoint the Committee, unless, of course, we can come to an agreement in advance.

Sir Akbar Hydari: My Lord, I have been asked by the members on this side to say, that we consider it essential that the Report of this Committee should be before us before we can join this Federation; that we cannot first join the Federation and leave it to the future Federation to say and determine the very important questions as to what shall be the taxation which it shall be within the province of the Federal Government to impose, questions as regards the contribution, and questions as to the proportion in which the different federating Units would have to undertake responsibility as regards contribution, and so forth. I thought that throughout it was contemplated that this Committee should be formed and its Report placed before those who were going in the first place to give a decision on it, and then that it should be placed before the various Indian States to say that, if they come into the Federation, this shall be one of the responsibilities, this shall be one of the conditions on which they enter.

Chairman: The position then is this. You say: "Well, we cannot say whether we will come into the Federation till we have seen the Report of that Committee."

Sir Akbar Hydari: Yes.

Chairman: Now, that being so, it is quite clear that, if that is right—I am not saying it is not for a moment—if that is right, of course, it is not for the Federation to appoint the Committee, because, till the Committee has made its Report, *ex hypothesi* the

Federation has not come into existence. The making of a Report by the Committee, and your approval of the Report, is a condition precedent to your entry into the Federation?

Sir Akbar Hydari: Yes.

Sir Maneckjee Dadabhoy: Unless Sir Akbar Hydari has changed his mind, my impression is that Colonel Haksar agreed to the suggestion that we should go into Federation at once, and enquiry was to be started afterwards.

Sir Akbar Hydari: No, I do not think that is so.

Dr. Shafa'at Ahmad Khan: I put that question myself, My Lord.

Sir Akbar Hydari: It was with regard to one question as to ceded territories, but, with regard to most of the questions, what we desired was that . . .

Chairman: Let us just follow you out. I want to get it quite clearly. Now, that being so, who do you say ought to appoint the Committee?

Sir Akbar Hydari: His Majesty's Government.

Chairman: Then your theory is this: His Majesty's Government must appoint a Committee to report upon these particular questions; and when you, the States, have seen their Report, you will then say whether, on that Report, you are willing to come in. Is that it?

Sir Akbar Hydari: What I say is merely this: that this Expert Committee would take the place of this sub-Committee on Federal Finance; that, as the Federal Finance sub-Committee had not the time or all the data available, it makes over all these enquiries to this Expert Committee; and then the same procedure would be followed as would have been followed by the sub-Committee if all this data had been before them.

Chairman: That Committee, I rather gather, according to you, would meet in India?

Sir Akbar Hydari: I suppose it would have to meet in India in view of the various data which are required.

Lord Peel: I was not quite clear about Sir Tej's proposal. Does he want to apply that Section 118 of the Constitution of South Africa Act only to the relations between the Federal Government and the Provinces, or also to the States?

Sir Tej Bahadur Sapru: The two are closely connected with each other, and there must be co-ordination between them. My suggestion is that you must appoint a Committee which will go into the whole question of the relation of the Provinces and also of the States. But in any case, whether you accept my suggestion or Sir Akbar's you will have to make provision for the interim period.

Sir Akbar Hydari: That was not my own personal view only, but the view of the States.

Lord Peel: This Section 118 is rather drastic. Is it to apply to the relations of the new Federal Government to the Provinces only or to the States?

Sir Tej Bahadur Sapru: I say both.

Lord Peel: I do not know what the States would say to that.

Lord Lothian: The great distinction is that the constitution of South Africa is a Union, not a federation at all; and all powers, including the right to amend the constitution, vest in the Union Parliament. I do not think you can really draw a comparison between a constitution which brings in a Central Government, the Indian States, the Provinces, and the Federation, and the constitution of South Africa in which was created a single unitary government which devolves certain minor powers on what used to be the old Provinces.

Sir Tej Bahadur Sapru: But until the Federation comes into existence, what are we to do? Either the Federal Government must impose its will or some outside body must do so.

Lord Peel: But are you contemplating a long interim period? Suppose the Expert Committee is set up directly after this Conference closes, it will proceed immediately upon its task.

Sir Tej Bahadur Sapru: The date at which you will appoint the Committee is not material from my point of view, but the recommendations of the Committee will have to be endorsed by the Federal Government. I am not going to oppose Sir Akbar Hydari if he wants a Committee appointed now, but a stage will be reached when the recommendations of that Committee will have to be endorsed by the Federal Government.

Sir Akbar Hydari: They will have to be endorsed by the different federating Units, not by the Federal Government. What we hold is that this is one of the conditions precedent to the federating Unit's determining whether it will federate or not.

Mr. Jayakar: I do not quite understand the point raised by Sir Akbar. He said he was expressing, not only his own view, but that of the States Delegation. Is it his view that there is going to be no Federation until this Expert Committee has been appointed, has made its Report and submitted it to the Units, and they have agreed to it?

Sir Akbar Hydari: That is the position so far as the Indian States are concerned.

Mr. Iyengar: The impression that we all had as the result of our deliberations is that the States had come to certain definite principles upon which this financial adjustment should take place, and that the details were to be examined by an Expert Committee. I quite agree that the words which have been employed in paragraph 4 of our Report on that view are hardly reconcilable with the impression that we received. I am quite free to admit that what I am now asking Sir Akbar Hydari to consider is simply this. If the acceptance of the recommendations of the Expert Committee

later on is the condition precedent to their expressing their desire to join or to keep out of the Federation that we start, does he think that, as that option to join or keep out of the Federation is still open to all States, we should proceed to construct this scheme of federation and put it in the Act of Parliament, leaving it to the States to choose whether or not to come in? I believe there is a clause to that effect in the Federal Structure Report. Or does he say, on the other hand, that we should not proceed to enact any clauses in the Federal Constitution until the Report of the Committee of Experts has been before us and we have had an opportunity of seeing whether those clauses are to our mutual advantage or not?

So far as the clauses in the South African Constitution and in the Nehru Constitution, to which Sir Tej Bahadur Sapru referred, are concerned, and which also embody the principle for which we are now contending, I may say, Lord Chancellor, that the idea of an interim arrangement is perfectly consistent with our proceeding to draft and to enact the constitution, because even when the Montagu-Chelmsford Report came out in 1919, there were clauses in the Reforms Act which provided for the separation of Provincial from Central finance after recommendations by a Committee which was to deal with the matter; and the Meston Committee was set up. The Meston Award is well known in Indian finance. That Committee was set up after the enactment of the new Montagu-Chelmsford Constitution, and it was provided that it should make its Award so as to separate the finances of the Provinces and make an adjustment between Central and Provincial finance, and that until that took place the existing state of affairs should continue. The Devolution Rules provided for the gradual re-adjustment of many items of Provincial contributions, so that they should be done away with in the course of seven years, after which there would be a complete separation of Provincial and Central finance.

I believe we were all under the impression to which Sir Maneckjee has referred. Colonel Haksar gave us the definite impression that he was asking us to concede many things because they were going to come into the Federation on any account, and the questions of detail might well be left over to an Expert Committee.

Chairman: Will you kindly tell me if the Meston Award was made before the 1919 Act or after it?

Mr. Iyengar: After the 1919 Act.

Chairman: But before 1921?

Mr. Iyengar: The Act had already been passed. The award was given so as to be put into operation after the first elections had taken place.

Sir Akbar Hydari: I should like to make it clear that it is perfectly open for this Committee to meet and to make its Report; and it is perfectly possible to frame your Federal Constitution, which you have decided will be presented to the federating Units, so far as the Indian States are concerned, for each of them to take

Lord Peel: This Section 118 is rather drastic. Is it to apply to the relations of the new Federal Government to the Provinces only or to the States?

Sir Tej Bahadur Sapru: I say both.

Lord Peel: I do not know what the States would say to that.

Lord Lothian: The great distinction is that the constitution of South Africa is a Union, not a federation at all; and all powers, including the right to amend the constitution, vest in the Union Parliament. I do not think you can really draw a comparison between a constitution which brings in a Central Government, the Indian States, the Provinces, and the Federation, and the constitution of South Africa in which was created a single unitary government which devolves certain minor powers on what used to be the old Provinces.

Sir Tej Bahadur Sapru: But until the Federation comes into existence, what are we to do? Either the Federal Government must impose its will or some outside body must do so.

Lord Peel: But are you contemplating a long interim period? Suppose the Expert Committee is set up directly after this Conference closes, it will proceed immediately upon its task.

Sir Tej Bahadur Sapru: The date at which you will appoint the Committee is not material from my point of view, but the recommendations of the Committee will have to be endorsed by the Federal Government. I am not going to oppose Sir Akbar Hydari if he wants a Committee appointed now, but a stage will be reached when the recommendations of that Committee will have to be endorsed by the Federal Government.

Sir Akbar Hydari: They will have to be endorsed by the different federating Units, not by the Federal Government. What we hold is that this is one of the conditions precedent to the federating Unit's determining whether it will federate or not.

Mr. Jayakar: I do not quite understand the point raised by Sir Akbar. He said he was expressing, not only his own view, but that of the States Delegation. Is it his view that there is going to be no Federation until this Expert Committee has been appointed, has made its Report and submitted it to the Units, and they have agreed to it?

Sir Akbar Hydari: That is the position so far as the Indian States are concerned.

Mr. Iyengar: The impression that we all had as the result of our deliberations is that the States had come to certain definite principles upon which this financial adjustment should take place, and that the details were to be examined by an Expert Committee. I quite agree that the words which have been employed in paragraph 4 of our Report on that view are hardly reconcilable with the impression that we received. I am quite free to admit that what I am now asking Sir Akbar Hydari to consider is simply this. If the acceptance of the recommendations of the Expert Committee

later on is the condition precedent to their expressing their desire to join or to keep out of the Federation that we start, does he think that, as that option to join or keep out of the Federation is still open to all States, we should proceed to construct this scheme of federation and put it in the Act of Parliament, leaving it to the States to choose whether or not to come in? I believe there is a clause to that effect in the Federal Structure Report. Or does he say, on the other hand, that we should not proceed to enact any clauses in the Federal Constitution until the Report of the Committee of Experts has been before us and we have had an opportunity of seeing whether those clauses are to our mutual advantage or not?

So far as the clauses in the South African Constitution and in the Nehru Constitution, to which Sir Tej Bahadur Sapru referred, are concerned, and which also embody the principle for which we are now contending, I may say, Lord Chancellor, that the idea of an interim arrangement is perfectly consistent with our proceeding to draft and to enact the constitution, because even when the Montagu-Chelmsford Report came out in 1919, there were clauses in the Reforms Act which provided for the separation of Provincial from Central finance after recommendations by a Committee which was to deal with the matter; and the Meston Committee was set up. The Meston Award is well known in Indian finance. That Committee was set up after the enactment of the new Montagu-Chelmsford Constitution, and it was provided that it should make its Award so as to separate the finances of the Provinces and make an adjustment between Central and Provincial finance, and that until that took place the existing state of affairs should continue. The Devolution Rules provided for the gradual re-adjustment of many items of Provincial contributions, so that they should be done away with in the course of seven years, after which there would be a complete separation of Provincial and Central finance.

I believe we were all under the impression to which Sir Maneckjee has referred. Colonel Haksar gave us the definite impression that he was asking us to concede many things because they were going to come into the Federation on any account, and the questions of detail might well be left over to an Expert Committee.

Chairman: Will you kindly tell me if the Meston Award was made before the 1919 Act or after it?

Mr. Iyengar: After the 1919 Act.

Chairman: But before 1921?

Mr. Iyengar: The Act had already been passed. The award was given so as to be put into operation after the first elections had taken place.

Sir Akbar Hydari: I should like to make it clear that it is perfectly open for this Committee to meet and to make its Report; and it is perfectly possible to frame your Federal Constitution, which you have decided will be presented to the federating Units, so far as the Indian States are concerned, for each of them to take

or to leave, on the basis of the Report. Before a State comes in, it must have some sort of picture of the situation and definite proposals of some sort to show what are the financial implications of its entering the Federation. That is all that I say. It is perfectly possible for you to construct your Federal finance proposals in any way you like, and it will be perfectly open to us to come into the Federation or not. You will have to balance the advantages and disadvantages of our States coming in or not according to the way you construct your picture.

Mr. Iyengar: But we assume that, if these Expert Committees proceed on the lines we have indicated and follow the principles we have given them for their guidance, then you will find no difficulty in joining. It is on that footing that we are proceeding, but you now say the whole thing is doubtful.

Sir Akbar Hydari: If there will be no difficulty in joining, then we shall join!

Chairman: Do you envisage members of the States being members of this Committee?

Sir Akbar Hydari: There will have to be some experts from the States, yes.

Sir Tej Bahadur Sapru: Oh, yes, certainly.

Sir Akbar Hydari: There will have to be experts who will bring up the Indian States' view. I do not know, but I think you will have to have people who will bring forward the Indian States' point of view. Otherwise, how will that Committee be a Committee which will be in possession of all the information?

Chairman: Supposing the Report is unanimous—that is to say, that your experts agree with the other experts—do you come in?

Sir Akbar Hydari: Sir, the difficulty is this. There can be no one representative of the Indian States, and you have not said that either the Indian States come in as a whole or they will all remain out of the Federation. What you have said is that you have left to each individual State its liberty of action, its liberty of coming into the Federation or not. And that definitely implies that you will have to place before each State the proposal under which you are offering it federation. I mean, even if you had Indian States representatives on those Committees as representatives of the Indian States, still those representatives cannot bind the States which are outside. I am simply putting my point, and I am asking how that is consistent with the Indian States outside. I do not say that is an obstructive position; I only want to make it clear that it is a position which is implied in the very nature of the position of the Indian States. So far as the Provinces and so far as British India are concerned, they may be in the position in which the Union of South Africa was, as Lord Lothian has very rightly pointed out; but so far as the Indian States are concerned they are in a group quite outside, each with its own power of sovereignty, its own liberty of action of coming into the Federation or not.

Chairman: We have got a very old proverb in England—it is perhaps rather a rude proverb to apply to a thing like this; but you do not want to " buy a pig in a poke," quite rightly. Now, what you want to say, is, " *Before any State comes in, it must be* in a position to know on what terms it is coming in." You say, " Now, Hyderabad "—for example, let us take your own State *because it is convenient, and you are the great State, if you will* forgive me for saying so—" Hyderabad, before it comes in, wants to know (a), (b), (c), (d), (e), (f)." Now, I would like to know, if you would kindly help me. What are (a), (b), (c), (d), (e), (f)? First of all, I know from what you say, that as regards (a), let us say, before Hyderabad comes in you want to see the Report of this Expert Finance Committee. Then you say, " Before Hyderabad comes in we want to see (b)." Now, what is (b)? How many conditions precedent are there? Do you want to see the whole draft Act of Parliament before you come in?

Sir Akbar Hydari: Oh, yes.

Sir Muhammad Shafi: Will the Indian States have a voice in *the selection of the personnel of this Expert Committee?* If so, will it be the Indian States who have previously expressed their willingness to come into the Federation, or will it be the Chamber of Princes, or what?

Sir Akbar Hydari: So far as the Chamber of Princes is concerned, I should like the reply on its behalf to be given by its honoured Chancellor.

H.H. The Nawab of Bhopal: The Chamber of Princes would like to be represented, and I think they would send their representatives. There would be no difficulty in that.

As I have been asked to speak, I will just add that I am very reluctant to say anything which may be regarded as impeding our progress, or which is likely to delay the consummation of the Federal idea; but, from the point of view of the States, I am afraid it will be necessary to have the Report of the Expert Committee before we shall be in a position, as far as we are concerned, to join the proposed Federation.

Lord Peel: I do not want to interrupt the discussion, but I was *rather sorry to hear* what His Highness The Nawab of Bhopal said about representation on the Expert Committee, and also, if I may say so, what Sir Akbar said about States' representatives on it. My *clear conception, and I think the Committee's conception,* was that it was not to be representative. There would not be States' experts or Provincial experts or anything of that sort, but experts—plain *experts—who were simply chosen for that reason, and not men who* come on as States' experts, who are going to advocate strongly the position of the States. That is precisely what we do not want. I *mean, you may decide to have it; but do not be under any delusion;* that is not what the Committee recommended.

Sir Akbar Hydari: My Lord Chancellor, I am perfectly prepared to accept that definition of the qualifications for the Expert Com-

mittee, so long as we have really only experts without having any point of view with regard to one part of India or another. I shall be quite glad to have that and allow the representatives of the different interests to give evidence before this Committee.

Sir Mirza Ismail: What is really wanted is an impartial Expert Committee.

Chairman: Sir Akbar, supposing you had an impartial Committee like that, and they, being impartial, made an impartial Report; are you accepting it and coming in?

Sir Akbar Hydari: I think, Sir, you must give us credit for also being people who will see that there is an impartial Report and that the Report has balanced all considerations very fairly; and therefore it is most probable that a State like mine will accept it. But I cannot say that unless and until I have seen the Report.

Sir Maneckjee Dadabhoy: Who will judge whether the Report is impartial?

Mr. Zafrullah Khan: May I put the difficulty to Sir Akbar broadly? There are two positions, as I conceive it, Sir Akbar Hydari. One is that we settle here the general principles. We cannot do more than that, even if we are fortunate enough to do that. And, on a survey of those general principles and their implications, the States, or at least as many of them as represent not less than 51 per cent. of the population of the States, signify their willingness to come into a scheme of federation of that kind, subject of course to their safeguards which they have rightly emphasised on every occasion. Then they must submit to leaving the decision of several questions of detail—very important questions no doubt, but questions of detail as compared with principle—to certain impartial Expert Committees' investigations and Reports. Will they take that risk? That is one position. I am not saying they should do that. In that case, of course, one can go forward with the framing of the constitution, and the general rules and the details will be filled in as those Reports come in. When those Reports come in, any one or more, or perhaps all the States, or perhaps British India on the other side, or some Provinces, might consider that, in this detail or in the other detail, the Report is not fair to them or is not equitable to them. But, to that extent, their general willingness to come in will have imposed that risk upon them. Well, that is one position; that is a position which we can understand, and on the basis of which we can continue to devote our time and energy to framing a constitution.

On the other hand, there can be another position, and it is this. The States say: Well, we are willing to come into a Federation—we accept these principles; but we cannot finally tell you whether we are coming in until we look at all these details. There will not only be this financial Expert Committee; several others might have to be appointed to work out in detail the actual concrete figures and facts, and so on. But if they take up that attitude, then the position

to my mind is this. You frame the whole detailed constitution, the draft of the Bill, the draft of the Rules, and the different co-ordinations and adjustments that are to take place, and put that before each individual State; you give them the choice of whether they will come in or not. The position then might be that, although as many States as represent more than 51 per cent. of the population had given their consent to coming into a Federation of which the principles were approved by them with regard to certain details, either you may have no States coming in at all, or you may have such a small number coming in that you could not proceed on the basis of an all-India Federation. The position then would be this, that we should have to start all-over again from the very beginning, scrapping the whole of the work of the Conference and its Committees, and so on, in order to frame a constitution proposed only for British India. This would be an impossible position, and I want to know from Sir Akbar Hydari to which of the two positions he is willing to give his adherence.

Chairman: I quite understand referring a thing to an impartial committee and then accepting its decision. May I be permitted a personal reminiscence. Many years ago, a gentleman who had gone to arbitration came to consult me on how to get out of the award. I said, "Well, but you went to arbitration, and therefore you cannot get out of the award." His reply was, "Call that arbitration! Why, he decided against me!" Well, I think you must adopt one position. If you say it is to be an impartial committee, would it not be wise to say whether it decides a little bit against this side or a little bit against that, that you accept its decision?

Now, about three-quarters of an hour ago, Sir Provash Chunder Mitter was in the middle of a speech, which was interrupted. I will ask him to resume.

Sir Provash Chunder Mitter: As Sir Tej Bahadur Sapru has pointed out, there might be a transition period. Another speaker —I think it was Mr. Jayakar—suggested that it might be open to States to come out of the Federation later on after the interim period.

Mr. Jayakar: I did not suggest anything. I wanted to know the position which Sir Akbar Hydari was taking up.

Sir Provash Chunder Mitter: Here is the unanimous Report of the Federal Finance sub-Committee, to which the present representatives of the States were parties. Can we not go on with this Report, and, whether we adopt what Sir Tej Bahadur Sapru has pointed out, or something else, during the transition period, come to the decision that we proceed on the basis of this Report? After the transition period is over, then, if any State wants to come out, it may come out, but subject to the one condition that, if there be less than 51 per cent., they will not be allowed to come out.

Mr. Sastri: Sir Provash Chunder Mitter is opening up a very dangerous issue; we have never before talked about coming out—

Sir Provash Chunder Mitter: It is just as well to have our controversies at this stage rather than later on. I should like to explain it in this way. If we adopt the Report of this sub-Committee, and if we have also a period of transition, then, during that period of transition, without committing ourselves finally, we do commit ourselves in the first place to this, namely, that during the transition period—three years, or whatever it may be—these will be the financial arrangements. After the transition period is over, some States at this stage will agree to take the risk of the decision arrived at within the transition period. Those States which take that risk will not be allowed to come out; but if we find 51 per cent. of the States are willing to take the risk, we can go ahead. There may, however, be one or more States which will not give an unconditional acceptance, and for them only I am prepared to agree to this arrangement. If we start with the fact that 51 per cent. of the States are not willing to take the risk of arbitration, then we know where we are; but I entirely agree with Sir Tej Bahadur Sapru that it may be very necessary to have provisional arrangements for the interim period. On the other hand, if the Committee is an Expert Committee, as I think it should be—I have no hesitation in saying that the Committee should be an Expert Committee—then, going back to my point, the representatives of the public should have an opportunity of discussing its Report. For what purpose? Not for the purpose of coming out, but for the purpose of making their suggestions. After those suggestions have been made, they may be accepted. By whom? Either by His Majesty's Government or by the future Federal Government. I would certainly prefer the future Federal Government, but Sir Akbar Hydari's intervention makes it clear that we may not have the States in the future Federal Government till the States know where they are.

To sum up, my position, therefore, is this. If we have to start with 51 per cent. agreeing to submit to arbitration, we can go ahead; and I should like that, because it is no good delaying matters. There are many points of view from which I am against delay. I am in favour of starting the Federation as early as possible; but, if that cannot be done, then I am afraid that, after the Expert Committee has been set up and has reported, some sub-Committee of this assembly, or some other sub-Committee must have its say. There is no escape from the proposition.

Sir Maneckjee Dadabhoy: I do not understand you at all.

Sir Provash Chunder Mitter: I am very sorry; I cannot make it clearer. If 51 per cent. would agree to the risk of arbitration there is an end of the matter. If 51 per cent. do not agree to the risk of arbitration then, rather than leave it after all this trouble, I am willing that the thing should be discussed further with a representative committee.

We have discussed this point, which is a most important one, very fully. The next point is this. In the other observations I

am going to put forward, I am going to put them forward with the idea in my mind that, if it commends itself to this Committee, some of these points may also be referred to the Expert Committee. I am not putting forward those points with the idea that we must here and now come to a decision, because such a decision will not be possible as we do not know the facts very fully, and as we have not all the materials before us.

With these preliminary observations, I would say that it would be advisable not to go into the question of past burdens; but if it is insisted on, then past burdens on both sides should be taken into consideration, for the result would be that the Expert Committee would make their recommendations——

Chairman: Would you have a Statute of Limitations?

Sir Provash Chunder Mitter: No, Sir.

Chairman: How far do you go back?

Sir Provash Chunder Mitter: I will tell you, Sir. Perhaps I was too hasty in saying "No". If the other side says no Statute of Limitations, then there will be no Statute of Limitations on the British side; but I do say, as practical men, we should fix a limit beyond which we should not go. That is my view. If the intention be to go back a hundred years, then we shall never end; but from my point of view, as I am against entering into the past, it is not for me to answer that. Your Lordship's question, if I may say so, clears the point very much. If you do not have a Statute of Limitations, then you will be going into a historical maze. Therefore drop the past—that is my view—but, if you do not drop the past, I would like the other side to say how long. Those are the observations I put forward on this part of the Report.

Now, Sir, another important point of principle is this, that in the future Federation there ought to be, as quickly as possible, enough resources, to which all the units of Federation have contributed, for the Federal burdens. I lay stress on the words "as quickly as possible." It will not be fair that the British Indian contributions should continue for an indefinite period of time. Therefore the Expert Committee should be asked to advise how soon the British Indian contributions should cease; and as soon as the British Indian contributions cease the only contributions should be contributions made by the Units of the Federation. That point should be specifically referred to the Expert Committee. My friend, Dr. Ambedkar, wants me to clear up my point. My point is this. I will refer to the Income-tax by way of illustration. The Income-tax is a purely British Indian contribution. I realise that at the present moment a part of the Income-tax, if not the whole of it, or a substantial portion of it will have to be paid; but the Expert Committee should fix a defi-nite time limit from which point of time either the Income-ta will cease to be paid or the Indian States will bring somethin

Sir Provash Chunder Mitter: It is just as well to have our controversies at this stage rather than later on. I should like to explain it in this way. If we adopt the Report of this sub-Committee, and if we have also a period of transition, then, during that period of transition, without committing ourselves finally, we do commit ourselves in the first place to this, namely, that during the transition period—three years, or whatever it may be—these will be the financial arrangements. After the transition period is over, some States at this stage will agree to take the risk of the decision arrived at within the transition period. Those States which take that risk will not be allowed to come out; but if we find 51 per cent. of the States are willing to take the risk, we can go ahead. There may, however, be one or more States which will not give an unconditional acceptance, and for them only I am prepared to agree to this arrangement. If we start with the fact that 51 per cent. of the States are not willing to take the risk of arbitration, then we know where we are; but I entirely agree with Sir Tej Bahadur Sapru that it may be very necessary to have provisional arrangements for the interim period. On the other hand, if the Committee is an Expert Committee, as I think it should be—I have no hesitation in saying that the Committee should be an Expert Committee—then, going back to my point, the representatives of the public should have an opportunity of discussing its Report. For what purpose? Not for the purpose of coming out, but for the purpose of making their suggestions. After those suggestions have been made, they may be accepted. By whom? Either by His Majesty's Government or by the future Federal Government. I would certainly prefer the future Federal Government, but Sir Akbar Hydari's intervention makes it clear that we may not have the States in the future Federal Government till the States know where they are.

To sum up, my position, therefore, is this. If we have to start with 51 per cent. agreeing to submit to arbitration, we can go ahead; and I should like that, because it is no good delaying matters. There are many points of view from which I am against delay. I am in favour of starting the Federation as early as possible; but, if that cannot be done, then I am afraid that, after the Expert Committee has been set up and has reported, some sub-Committee of this assembly, or some other sub-Committee must have its say. There is no escape from the proposition.

Sir Maneckjee Dadabhoy: I do not understand you at all.

Sir Provash Chunder Mitter: I am very sorry; I cannot make it clearer. If 51 per cent. would agree to the risk of arbitration there is an end of the matter. If 51 per cent. do not agree to the risk of arbitration then, rather than leave it after all this trouble, I am willing that the thing should be discussed further with a representative committee.

We have discussed this point, which is a most important one, very fully. The next point is this. In the other observations I

m going to put forward, I am going to put them forward with he idea in my mind that, if it commends itself to this Committee, ome of these points may also be referred to the Expert Committee. I am not putting forward those points with the idea that we must here and now come to a decision, because such a decision will not be possible as we do not know the facts very fully, and as we have not all the materials before us.

With these preliminary observations, I would say that it would be advisable not to go into the question of past burdens; but if it is insisted on, then past burdens on both sides should be taken into consideration, for the result would be that the Expert Committee would make their recommendations——

Chairman: Would you have a Statute of Limitations?

Sir Provash Chunder Mitter: No, Sir.

Chairman: How far do you go back?

Sir Provash Chunder Mitter: I will tell you, Sir. Perhaps I was too hasty in saying "No". If the other side says no Statute of Limitations, then there will be no Statute of Limitations on the British side; but I do say, as practical men, we should fix a limit beyond which we should not go. That is my view. If the intention be to go back a hundred years, then we shall never end; but from my point of view, as I am against entering into the past, it is not for me to answer that. Your Lordship's question, if I may say so, clears the point very much. If you do not have a Statute of Limitations, then you will be going into a historical maze. Therefore drop the past—that is my view—but, if you do not drop the past, I would like the other side to say how long. Those are the observations I put forward on this part of the Report.

Now, Sir, another important point of principle is this, that in the future Federation there ought to be, as quickly as possible, enough resources, to which all the units of Federation have contributed, for the Federal burdens. I lay stress on the words "as quickly as possible." It will not be fair that the British Indian contributions should continue for an indefinite period of time. Therefore the Expert Committee should be asked to advise how soon the British Indian contributions should cease; and as soon as the British Indian contributions cease the only contributions should be contributions made by the Units of the Federation. That point should be specifically referred to the Expert Committee. My friend, Dr. Ambedkar, wants me to clear up my point. My point is this. I will refer to the Income-tax by way of illustration. The Income-tax is a purely British Indian contribution. I realise that at the present moment a part of the Income-tax, if not the whole of it, or a substantial portion of it, will have to be paid; but the Expert Committee should fix a definite time limit from which point of time either the Income-tax will cease to be paid or the Indian States will bring something

Committee, although I raised that point. I again draw attention to the United States Constitution, and I desire that this question should be examined by the Expert Committee. I do not want this Committee to come to a decision immediately.

Lord Peel: What do you want to have examined by it?

Sir Provash Chunder Mitter: I want the Expert Committee to discuss the question whether, as in the American Constitution, no Export duty should be imposed on a Unit unless that Unit consents. At the present moment the source of Export duties is a matter in which my Province is vitally interested with regard to jute. What I do want the Expert Committee to consider is the idea of forbidding the imposition of Export duties without the consent of the federating Units, as in the American Constitution. How much—that should be ascertained. What is the total amount of Export duty now realised and likely to be realised in the future? Whether they should continue to be levied in spite of the objection of the Province or Provinces concerned, and if they cease to be levied, in what other way the necessary funds can be found? That I want the Expert Committee to examine and consider.

Lord Peel: I think you are widening, are you not, the Expert Committee's job a great deal by giving them a very wide discretion as to whether Export duties should be permitted? Is not that rather a matter of wide principle? Is that exactly a thing for an Expert Committee to examine, as to whether generally Export duties should be permitted in a Federal Constitution?

Sir Provash Chunder Mitter: Yes, generally speaking that is so; but there is an important point, and that point is whether without Export duties the Government can collect sufficient revenues to meet its obligations. We may have to have Export duties for a temporary period whatever the question of principle may be. Therefore, I want in the first instance the materials. How much is realised from Export duty? How does the realisation of Export duties affect the Provinces concerned? For example, on the question of jute, we are told there is a monopoly. Well, it being a monopoly, you can have a jute Export duty without affecting the interests concerned. But we in Bengal know it does affect the interests concerned; at any rate, it does affect the ryots. Therefore there are questions of fact which have to be ascertained and can be ascertained. After those questions of fact have been ascertained we shall be in a better position to deal with the question of principle. I quite agree, My Lord, that the question of principle is not a function of the Expert Committee; but there are facts to be ascertained.

Then, Sir, under 10, Classification of Revenues, I find the fourth item:—

> "Excises on articles on which Customs duties are imposed (with the exception of excises on Alcohol, Narcotics and Drugs)."

I think the language may well be a little wider. The language may be:—

> "Excises on all articles (with the exception of Excises on Alcohol, Narcotics and Drugs)."

I do not know; perhaps that is meant. What I mean is this, that generally speaking the Provinces should get the Excises which *they have at the present* moment. We cannot afford to let the Federal Government have these. Therefore, even where on a particular commodity no Customs duty is levied, it may be quite open to the Federal Government to levy an Excise duty on that commodity so long as the Excise duty on the existing Provincial sources is left to the Provinces. If you leave it in its present form, the Federal Government may come to the conclusion that, on a particular commodity, *no* Import duty need be imposed, or no Export duty need be imposed; but that commodity might be a fairly fruitful source of revenue. Therefore, all that I want is that the words "on which Customs duties are imposed" should be deleted; but these words should remain: "(*with the exception of Excises on* Alcohol, Narcotics and Drugs)."

Lord Peel: Had you anything in your mind on which you might wish to put Excises without a Customs duty? I suppose it would only apply to something which was entirely produced in India and *nowhere else*. Otherwise you would probably want a Customs duty, because you would not want to prejudice your own product against the imported production. Is there any subject you have got in your mind?

Sir Provash Chunder Mitter: I will come to specific points, but I have in mind your general observations on page 8:—

> "We agree that, if such taxes were levied, the proceeds should go to the Provinces and the States. In any case we think that both the rates and the *general conditions* under which such taxes would be imposed should be subject to the control of the Federal Government and Legislature."

My main point is: Why should it be limited only to the question of imposition of Customs duties?

Lord Peel: The point is rather academic, is not it?

Sir Provash Chunder Mitter: No; take, for instance, tobacco. It may not be academic. As I said in my opening speech, I am against the imposition of taxes on chillum tobacco. Let me explain what that means for the benefit of my British colleagues. My Indian colleagues ought to understand what chillum tobacco is, unless they have become so Anglicised that they have *forgotten* their Indian language. What I mean is this. Tobacco in the indigenous form is smoked by the hookah. I am opposed to imposing a tax on that, at any rate for Federal purposes. With regard to cigars, pipe tobacco and cigarettes, that is a subject of Customs duty, and may well be the subject of Excise duty as well. I am quite willing to submit to that as a source of Excise revenue

for the Federal Government. Whether you do it by Customs or any other way, that is another matter. But let us suppose that Mahatma Gandhi presses more insistently for the abolition of the Salt revenue, and says that Indians who smoke tobacco should pay the deficit. That is a concrete example. If you reduce the Salt tax by half you have to find that half by other sources of revenue.

Chairman: That sounds rather like an election speech!

Sir Provash Chunder Mitter: I may point out that there is a fruitful source of much revenue. It is not exactly an election speech I am making. I want to ask what it is we gain by keeping in those words "Customs duties are imposed." If we do not keep those words in, our hands will be less tied. I certainly agree that we should keep in the words "(with the exception of Excises on Alcohol, Narcotics and Drugs)".

(The Committee adjourned at 1-5 p.m. and resumed at 2-30 p.m.)

Sir Provash Chunder Mitter: I was dealing this morning with page 9, and I have dealt with paragraph 16, Provincial Contributions, and paragraph 17, States' Contributions. I will now go to paragraphs 18 and 19 on page 10. I would suggest that the principle of "no discrimination" should be adopted amongst the Units of the Federation in respect of Federal taxation. This, I may remind you, obtains in the Australian Constitution, where no discrimination is allowed. This is a general principle for which I would plead, but it has a particular application to what we are discussing in paragraphs 18 and 19 on page 10. If I may, I will start with the points which have a bearing as between the British Indian Provinces and the Indian States, because they have a bearing on the principle for which I am pleading. At page 10, under "Cash Contributions," the remark is this:—

> "Cash contributions from States (till recently known as tributes) have arisen in many different ways, and it has been impossible for us to examine the cases of individual States. Nevertheless, we think that there is, generally speaking, no place for contributions of a feudal nature under the new Federal Constitution;"

I agree entirely with that observation—

> "and only the probability of a lack of Federal resources at the outset prevents our recommending their immediate abolition. We definitely propose that they should be wiped out *pari passu* with the Provincial Contributions discussed in paragraph 16 above."

My observation arises out of this, taking this as an illustration. The different Units of the Indian States do not contribute at the same rate—they have to pay different sums, or even none at all; and, after laying down the general proposition that they are of a feudal nature, under the new Federal Constitution contributions of

a feudal nature should not obtain. They go on to point this out from the point of view of meeting the deficit—at least that is how I understand it. Now, my point is that there you are really discriminating between different States. I apply the same argument as to the question of differentiating between British India and Indian India on the question of Income-tax; but the Federal expenses have got to be met, and the question is how to meet them. At the earliest possible moment, the Federal Government should set its house in order. The Federal Government should have resources, either by taxes or in whatever way they can do it—should have its own resources—for meeting its own obligations; and for that reason I suggest that this principle, as a principle, should be applied, and should be applied between British India on the one hand and the Indian States on the other—and between the Indian States *inter se*.

That general principle for which I am pleading also applies to what is stated in paragraph 19. It may be perfectly correct to say that some of the Indian States have been contributing towards the Military expenditure. Well and good. If those Military expenditure contributions were contributions in the past, I have already asked that we should forget about the past; but still, if my friends on the other side of the House decide on such an enquiry, let a similar enquiry be made about British India. But in future, supposing one particular State makes a certain contribution and another State does not, it will lead to endless difficulties. That should be a matter for arrangement between the future Federal Government and the particular State which contributes in that manner; and if we take those contributions as contributions of the Indian States *en masse*, then it comes to this, that some State gets an advantage and others do not. Therefore I would apply the same principle throughout.

Then, Sir, that general observation has a bearing also on paragraphs 16, 17, 18 and 19—namely, while I have no objection to contributions being levied from Provincial Governments in case of emergency, or, as Lord Peel pointed out, either in case of emergency or to preserve the general credit of India, I certainly object on the question of principle that the British Indian Provinces should contribute and the Indian States should not contribute. If the British Indian Provinces are asked to contribute, then the Indian States should be asked to make a contribution on some equitable basis.

Then, Sir, lastly there is the question of the Maritime States which is dealt with in paragraph 20 on page 10. There what is stated is this:—

> "These States, being on the frontiers of India, are in a special position as regards the question of external Customs duties. Here again, we feel that it is impossible to deprive States of revenue of which they are already in possession."

I agree with that. In my opening remarks I accepted that position, that the existing internal duty should be allowed to be retained. But it goes on to state:—

> " One principle which we would lay down is that, in all cases, the Import tariff at the States' Ports should not be less than that at Ports in the rest of India."

There I have an observation to offer, and that observation is this. If the import duty levied be less than the duty levied in British India, then they should be asked to levy the same duty as in British India, the difference going to the Federal Exchequer and their old income remaining with the States. My reason is this. On general principles one cannot agree to internal duties or maritime duties being imposed by Units of the Federation. But these States have to budget for their income and expenditure. Therefore I think we should submit to that extent, namely, that we shall not touch their existing revenues; but, as regards any future increase, that should only be allowed subject to the consent of the Federal Authority, namely, the Federal Government. It has been pointed out by some speakers that that is trenching upon their rights of sovereignty, and obviously it is. But when they agree to come into the Federation on a definite basis, to that extent I take it Their Highnesses are willing to give up that particular right so far as the future is concerned. That remark applies both with regard to internal Customs and the Maritime States.

There is only one other point to which I want to refer; that is the question of Commercial Stamp taxes. With regard to that my position is this. If the States agree to this, we on the British Indian side should not object. Commercial Stamps should be strictly limited to Commercial Stamps proper, and should not be extended to what we call non-judicial stamps, namely, stamps on leases, conveyances and so forth. The revenue from those stamps will remain in the Provinces as it is at the present moment. We used to have stamps on cheques but that has been abolished, though we have stamps on *mundis*. That kind of stamps should be a Federal source of revenue. Stamps on local transactions, such as the sale and lease of land, now constitute a Provincial asset, and that should remain a Provincial asset. That is all I have to say.

Sir Akbar Hydari: My Lord Chancellor, I want to deal only with one point that has been raised. I suppose that will not preclude me from taking part in the discussion later on, if any other point is raised on which I desire to speak. The question has been raised—and we on this side have taken up a united attitude—that we should have the Report of this Expert Committee before we can say whether we will enter into the constitution or not. I want to point out, in the first place, that we stand entirely by every word of what has been stated and agreed to by us in this Report of the Federal Finance sub-Committee. I have simply stated what was

agreed to by the entire Federal Finance sub-Committee at the very outset of their Report. In paragraph 4 they definitely say:—

"Any theoretical scheme for the division of resources and obligations should, before being embodied in the Constitution, be put to the test of a careful examination of its probable results by some body which is fully equipped for the task. We accordingly recommend that, with the least possible delay after the conclusion of the present Session of this Conference, an Expert Committee should be constituted for the purpose of working out in detail a financial scheme for the Federation, taking as its starting-point the general proposals contained in our Report (subject, of course, to their acceptance by the Federal Structure Committee and the Conference) The Expert Committee must have for its guidance some general principles of the kind set out below, but it should be free to make alternative suggestions if, on closer examination of the facts, a probability is disclosed that any general principles laid down by us would, in practice, prove unworkable In addition to the Committee's duty of framing a general scheme, there are also many specific points, some of which we mention below, on which its advice should be sought."

That is really the constitution of the Expert Committee; that is its main purpose. It was thought that even the constitution could not be formed until the Committee had done its work. I stand by the principles laid down here. I do not depart from them. I accept them; but I do want to say that, when this Committee is agreed to, it should first of all explore the financial position.

I come now to another point. I should like to invite the attention of this Committee to what was stated at the very outset of the Federal Structure sub-Committee's Report last Session, when we said:—

"Every member of the sub-Committee reserves to himself the right of modifying the opinions before the final picture is completed."

We have all along been proceeding in this Conference in the direction of trying to fill up a sketch, and when the picture is completed, we shall be asked to say whether we will come in or not. Well, My Lord, as I have said, we accept the position. So far as Hyderabad is concerned, I have gone further; and I have said that, if you are going to confine yourselves to the present revenue and expenditure of India as they are, to the burdens which exist at present, without any compensation one way or the other, and without the imposition of any fresh burdens, I, for one, will not object to a financial settlement of that kind. But we have to go very much further. There are many States which have special claims and so on, and we find that even the Provinces themselves want certain adjustments. All these things require exploration, and unless and until that exploration has been completed it is

I agree with that. In my opening remarks I accepted that position, that the existing internal duty should be allowed to be retained. But it goes on to state:—

> "One principle which we would lay down is that, in all cases, the Import tariff at the States' Ports should not be less than that at Ports in the rest of India."

There I have an observation to offer, and that observation is this. If the import duty levied be less than the duty levied in British India, then they should be asked to levy the same duty as in British India, the difference going to the Federal Exchequer and their old income remaining with the States. My reason is this. On general principles one cannot agree to internal duties or maritime duties being imposed by Units of the Federation. But these States have to budget for their income and expenditure. Therefore I think we should submit to that extent, namely, that we shall not touch their existing revenues; but, as regards any future increase, that should only be allowed subject to the consent of the Federal Authority, namely, the Federal Government. It has been pointed out by some speakers that that is trenching upon their rights of sovereignty, and obviously it is. But when they agree to come into the Federation on a definite basis, to that extent I take it Their Highnesses are willing to give up that particular right so far as the future is concerned. That remark applies both with regard to internal Customs and the Maritime States.

There is only one other point to which I want to refer; that is the question of Commercial Stamp taxes. With regard to that my position is this. If the States agree to this, we on the British Indian side should not object. Commercial Stamps should be strictly limited to Commercial Stamps proper, and should not be extended to what we call non-judicial stamps, namely, stamps on leases, conveyances and so forth. The revenue from those stamps will remain in the Provinces as it is at the present moment. We used to have stamps on cheques but that has been abolished, though we have stamps on *mundis*. That kind of stamps should be a Federal source of revenue. Stamps on local transactions, such as the sale and lease of land, now constitute a Provincial asset, and that should remain a Provincial asset. That is all I have to say.

Sir Akbar Hydari: My Lord Chancellor, I want to deal only with one point that has been raised. I suppose that will not preclude me from taking part in the discussion later on, if any other point is raised on which I desire to speak. The question has been raised—and we on this side have taken up a united attitude—that we should have the Report of this Expert Committee before we can say whether we will enter into the constitution or not. I want to point out, in the first place, that we stand entirely by every word of what has been stated and agreed to by us in this Report of the Federal Finance sub-Committee. I have simply stated what was

agreed to by the entire Federal Finance sub-Committee at the very outset of their Report. In paragraph 4 they definitely say:—

> "Any theoretical scheme for the division of resources and obligations should, before being embodied in the Constitution, be put to the test of a careful examination of its probable results by some body which is fully equipped for the task. We accordingly recommend that, with the least possible delay after the conclusion of the present Session of this Conference, an Expert Committee should be constituted for the purpose of working out in detail a financial scheme for the Federation, taking as its starting-point the general proposals contained in our Report (subject, of course, to their acceptance by the Federal Structure Committee and the Conference). The Expert Committee must have for its guidance some general principles of the kind set out below, but it should be free to make alternative suggestions if, on closer examination of the facts, a probability is disclosed that any general principles laid down by us would, in practice, prove unworkable. In addition to the Committee's duty of framing a general scheme, there are also many specific points, some of which we mention below, on which its advice should be sought."

That is really the constitution of the Expert Committee; that is its main purpose. It was thought that even the constitution could not be formed until the Committee had done its work. I stand by the principles laid down here. I do not depart from them, I accept them; but I do want to say that, when this Committee is *agreed to, it should first of all explore the financial position.*

I come now to another point. I should like to invite the attention of this Committee to what was stated at the very outset of the Federal Structure sub-Committee's Report last Session, when we said:—

> "Every member of the sub-Committee reserves to himself the right of modifying the opinions before the final picture is completed."

We have all along been proceeding in this Conference in the direction of trying to fill up a sketch, and when the picture is completed, we shall be asked to say whether we will come in or not. Well, My Lord, as I have said, we accept the position. So far as Hyderabad is concerned, I have gone further; and I have said that if you are going to confine yourselves to the present revenue and expenditure of India as they are, to the burdens which exist at present, without any compensation one way or the other, and without the imposition of any fresh burdens, I, for one, will not object to a financial settlement of that kind. But we have to go very much further. There are many States which have special claims and so on, and we find that even the Provinces themselves want certain adjustments. All these things require exploration, and unless and until that exploration has been completed it is

surely but reasonable for every federating Unit, and certainly every Indian State, to reserve to itself the liberty of saying whet with such and such burdens, or with such and such possible b dens, it will prefer to come in or to remain where it is.

It is not a question of referring to arbitration a particul point, where the particular parties interested are there. You wi have an Expert Committee, and it will not be a case of a certai State having particular sources of revenue and a particular finar cial system which will be explored in detail, and then it being said: "You will have to give so much". It is not a Committee to which a State can ask such and such a particular point to be referred. You are asking for the creation of a Committee on which there may be representatives of States—I will come to that point in a moment—but which will certainly be a small body of people who will try to find out how the general scheme of Federal finance should be laid down, without giving, according to the contention of the other side, to each and every individual State any possibility of saying what its particular view is, and then saying whether it will come in or not according to the decision which is arrived at. That is all I want to say on this point; but I would repeat that, in taking up this attitude, the Indian States are not seeking to take up an obstructive attitude. It is they who have offered to come in, and they have tried to make the way as smooth as possible. If you will refer to the latter part of the sentence which I read out, you will see how, at the instance of the British Indian Delegation, we allowed the Committee to have as wide a field of exploration as possible. At first the Indian States wanted to restrict the field of taxation to purely "indirect" taxation; but towards the end they were told that that might mean too great a restriction, and so they gave them a wider field and allowed them to explore the Corporation tax, and so on. The Indian States therefore want to have as complete an enquiry as possible, and I am certain that the experts you will have will be able to complete this enquiry within the time which will be required to complete other enquiries which will be necessitated about other questions affecting the constitution. It is not as if we were trying to obstruct your work; we are simply stating what we have been urging throughout, namely, the individual right of every State to see what is being presented to it and what is the kind of Federation which it is being asked to enter. You have all conceded that it will be left entirely to its discretion to say whether it will be better pleased to remain where it is or whether it will come into the Federation.

With regard to the Expert Committee, I, for one, am perfectly repared to accept what Lord Peel says, that it should be a body of ure experts without any representative character, if you think iat that will be the best way of dealing with the problem. There re several people with very great authority who are with me in iinking that you must have financial experts who have got a reitation for honesty and wide vision, but at the same time it may cilitate enquiry if you have on that Committee members who can

explain to the Committee the different points of view—people who have a knowledge of State finance and who will be able to say how particular measures would be looked at by particular States, and British Indians who can say how they would be looked at from the British Indian point of view, and so on. However, there would have to be an impartial Chairman, and all these people should start with a reputation for being impartial. I am not at all wedded, however, to the idea that there should be any representative character attached to it. All that I say is that we must make the best possible selection, that we must have the matter thoroughly explored, and that we should try to make it as definite as possible and place before the federating Units, including the Provinces, an exact statement of what they will have to bear immediately and what are the further possibilities of additional demands.

Chairman: There is only one point I should like to ask you, but I do not at all desire that you should give an answer to it now. Do you consider that we should fix some time by which people should make up their minds? I mean to say, we are going on and on and on now, and there is no certainty that anybody will ever do anything. I am only thinking whether we ought not to say, "Well, after all, the days of man are three score years and ten," and that we must come at some time to a decision.

Sir Akbar Hydari: I quite agree that we must fix some time.

Chairman: I do not want in any way to prejudice it, but, for instance, let me put a ridiculous thing, which is the way of testing things, as you know, in law. It would be ridiculous to say that we must make up our minds within fifty years.

Sir Akbar Hydari: Quite so. Are you implying that that is the position taken up by the Indian States?

Chairman: No. Do you consider that it would be wise for us to say that we should make up our minds whether we are going to do it or not, or do you think it would be better to let it run on, and hope that in some way it will happen?

Sir Akbar Hydari: But does not that depend upon you, My Lord Chancellor? If you complete your work and His Majesty's Government will draft their proposals.

Chairman: I am perfectly prepared to complete my work, and I am perfectly prepared to go on to-morrow with all those questions that I have put down; and if you will help me to do that ——

Sir Akbar Hydari: I am quite prepared to help you.

Chairman: I am certainly prepared; but the difficulty about it is that some other people say, "We cannot go into this question unless this or that or the other question is decided". I am personally prepared to go into everything and to answer all those questions. Now I agree with you.

Sir Akbar Hydari: So am I.

Chairman: Well, I hope we shall manage to do that, because if all of us keep on saying, "I am not going to discuss (*a*), (*b*) and (*c*) until you have discussed (*d*)," it makes it very difficult.

Sir Akbar Hydari: My position is not that we are not prepared to discuss them. We have discussed and we have decided upon certain principles to which we have agreed. We want the exploration of those principles with reference to particular facts which is necessary before each State is asked to enter into the Federation.

Chairman: Within what sort of time? What sort of time do you envisage for all this?

Sir Akbar Hydari: I should say that an Expert Committee, with the references which this Committee is going to have, ought to complete its work in a year's time.

Chairman: Thank you very much; and naturally, I suppose, they would have to sit in India?

Sir Akbar Hydari: Well, that is a matter which depends upon what the constitution of the Committee is.

Chairman: What I am thinking is this. We cannot keep on asking all you gentlemen to come to England once every six months.

Sir Akbar Hydari: No; I do not say this present Conference—certainly not. But as to whether the Committee should sit in India or whether the Committee should sit in England, as I see it, it would have to sit in India, but I am not wedded to that. All I want is that the Committee should sit in a place where it can best do its work in the shortest possible time.

Chairman: And you think that in about a year's time you would be able, having looked at the Report of the Committee, to make up your mind on that point at any rate?

Sir Akbar Hydari: Which point?

Chairman: The point as to whether the Federal finance satisfies you.

Sir Akbar Hydari: Yes; and by that time all the other points will also be ready, so that you will be able to present before the States practically all the details of a complete picture, or, if not all the details, at least all the salient points to enable them to decide whether they will come in or not.

Chairman: Then you will not be disappointed if we do not do all our work at this Conference?

Sir Akbar Hydari: It depends on what you mean by "all our work". If you mean that you will fill up the details, explaining as to what the minorities should have, what the franchise should be, and all that, I do not think that can be done within the few weeks in which we can be present here.

Mr. Zafrullah Khan: Lord Chancellor, Before I proceed to submit my observations on the Report of the Finance sub-Com-

mittee, may I, with your permission, make a brief reply to a question that you were pleased to put to me on the 25th October at the conclusion of the session?

Chairman: Yes, I should be very much obliged if you would; that would be a great help to me. That is about the Legal sub-Committee's Report.

Mr. Zafrullah Khan: Yes. That subject is alluded to in the first sentence of paragraph 5 of the Finance sub-Committee's Report also, where they say, regarding "Central" subjects:—

> "It seemed likely that a residue of such subjects (notably certian civil and criminal legislation) would remain indefinitely."

You were kind enough to draw my attention to item 16 at page 32 of the Federal Structure sub-Committee's Report, which is described as:—

> "Civil Law, including laws regarding status, property, civil rights and liabilities and civil procedure."

Your Lordship also drew my attention to the Report of the Legal sub-Committee, printed at pages 39 and 40. The Legal sub-Committee considered the possibility of giving Provincial Legislatures a plenary power of legislation over the whole field of civil and criminal law and giving the Central Legislature power to legislate on those matters only which are necessarily the concern of the Central Authority. They found, however, that it would be difficult, if not impossible, to specify or even to indicate in general terms all the matters which should be reserved for the Central Legislature, and that, therefore, it was necessary to give the Central Legislature a wide power of legislation. The scheme that they proposed was that, barring certain subjects which must be reserved for the Central Authority, the Central Authority should have full power of legislation over the whole field of civil and criminal law, with concurrent power to the Provinces to legislate, subject to the restriction laid down, in the second paragraph of the Report, that is to say, that in order to maintain uniformity, before they proceed to amend certain Acts they should obtain the previous consent of the Governor General in Council, as is necessary at present. They also went on to say that, supposing there was a law passed by the Central Authority, and a law on the same subject by a Province, then naturally the Central law should have precedence—it should prevail over the Provincial law.

Chairman: That is in the case of a conflict.

Mr. Zafrullah Khan: Yes, in the case of a conflict. That was the Report submitted. Now with very great respect to the very eminent legal authorities who are responsible for that Report, I believe it is possible at least to indicate in general terms, the matters which should be reserved for the Central Legislature and to give the Provinces plenary powers in the balance of the field of civil and criminal law, subject to the restriction laid down in the

Chairman: Well, I hope we shall manage to do that, because if all of us keep on saying, "I am not going to discuss (*a*), (*b*) and (*c*) until you have discussed (*d*)," it makes it very difficult.

Sir Akbar Hydari: My position is not that we are not prepared to discuss them. We have discussed and we have decided upon certain principles to which we have agreed. We want the exploration of those principles with reference to particular facts which is necessary before each State is asked to enter into the Federation.

Chairman: Within what sort of time? What sort of time do you envisage for all this?

Sir Akbar Hydari: I should say that an Expert Committee, with the references which this Committee is going to have, ought to complete its work in a year's time.

Chairman: Thank you very much; and naturally, I suppose, they would have to sit in India?

Sir Akbar Hydari: Well, that is a matter which depends upon what the constitution of the Committee is.

Chairman: What I am thinking is this. We cannot keep on asking all you gentlemen to come to England once every six months.

Sir Akbar Hydari: No; I do not say this present Conference—certainly not. But as to whether the Committee should sit in India or whether the Committee should sit in England, as I see it, it would have to sit in India, but I am not wedded to that. All I want is that the Committee should sit in a place where it can best do its work in the shortest possible time.

Chairman: And you think that in about a year's time you would be able, having looked at the Report of the Committee, to make up your mind on that point at any rate?

Sir Akbar Hydari: Which point?

Chairman: The point as to whether the Federal finance satisfies you.

Sir Akbar Hydari: Yes; and by that time all the other points will also be ready, so that you will be able to present before the States practically all the details of a complete picture, or, if not all the details, at least all the salient points to enable them to decide whether they will come in or not.

Chairman: Then you will not be disappointed if we do not do all our work at this Conference?

Sir Akbar Hydari: It depends on what you mean by "all our work". If you mean that you will fill up the details, explaining as to what the minorities should have, what the franchise should be, and all that, I do not think that can be done within the few weeks in which we can be present here.

Mr. Zafrullah Khan: Lord Chancellor, Before I proceed to submit my observations on the Report of the Finance sub-Com-

mittee, may I, with your permission, make a brief reply to a question that you were pleased to put to me on the [illegible] October at the conclusion of the meeting?

Chairman: Yes, I should be very much obliged if you would: that would be a great help to me. That is about the Legal sub-Committee's Report.

Mr. Zafrullah Khan: Yes. That subject is alluded to in the first sentence of paragraph 5 of the Finance sub-Committee's Report also, where they say, regarding "Central" subjects:—

> "It seemed likely that a residue of such subjects (notably certian civil and criminal legislation) would remain indefinitely."

You were kind enough to draw my attention to item 16 at page 32 of the Federal Structure sub-Committee's Report, which is described as:—

> "Civil Law, including laws regarding status, property, civil rights and liabilities and civil procedure."

Your Lordship also drew my attention to the Report of the Legal sub-Committee, printed at pages 39 and 40. The Legal sub-Committee considered the possibility of giving Provincial Legislatures a plenary power of legislation over the whole field of civil and criminal law and giving the Central Legislature power to legislate on those matters only which are necessarily the concern of the Central Authority. They found, however, that it would be difficult, if not impossible, to specify or even to indicate in general terms all the matters which should be reserved for the Central Legislature, and that, therefore, it was necessary to give the Central Legislature a wide power of legislation. The scheme that they proposed was that, barring certain subjects which must be reserved for the Central Authority, the Central Authority should have full power of legislation over the whole field of civil and criminal law, with concurrent power to the Provinces to legislate, subject to the restriction laid down in the second paragraph of the Report, that is to say, that in order to maintain uniformity, before they proceed to amend certain Acts they should obtain the *previous consent* of the Governor General in Council, *as is necessary at present.* They also went on to say that, *supposing there was a law passed* by the Central Authority, and a *law on the same subject by a* Province, then naturally the Central law *should have precedence* . it should prevail *over* the Provincial law.

Chairman: That is in the *case of a conflict.*

second paragraph, which I would still have, that certain Acts should not be amended by the Provinces without previous sanction, in order to maintain uniformity.

Chairman: You say "amended." Do you mean amended, or, in addition to amended, that they should not be passed? All you said was "amended." Supposing there was a new sort of Act coming in like a Rent Restriction Act.

Mr. Zafrullah Khan: Well, the present position, My Lord, is this, that in the rules made under Section 80A, sub-Section 3 (*h*), of the Government of India Act, there is a list of Statutes that are at present in operation; and the provision is that these Statutes shall not be amended in any way without the previous sanction of the Governor-General. That particular list does not say that, with regard to certain matters, there shall be no legislation by the Provinces. Of course there are other provisions which require previous sanction with regard to legislation on certain *subjects;* but I am at present talking of this list, which says that those Acts shall *not* be amended by any Province without previous sanction.

With regard to the general previous sanction rules, my submission will be that in the field which is left to the Provinces, there should be no previous sanction required except to the extent indicated in the second paragraph. With regard to the subjects left to the Provinces, the Provinces should be free to legislate provided their enactments do not amend the specified Acts.

Chairman: Would you accept, in addition to "amendment," the words "any variation of"?

Mr. Zafrullah Khan: Yes, I mean amendment in a wide sense. With regard to the division of the field, we must remember that, since that Report was written, there has been unanimity on the point that the Central Legislature shall be only one, namely, the Federal Legislature. There shall not be two Legislatures, one for the Federal body and one for the Centre. There is also unanimity of opinion that there shall be one Executive, which shall be the Federal Executive, and which shall also administer any subjects which might still be regarded as "Central." My position with regard to the division of subjects into Federal, "Central" and Provincial, was that I hoped to see, in the course of time, the category of "Central" subjects disappear, not by the process which was indicated by Mr. Joshi—that all of them should be federalised—but that it might be possible to federalise some of them or some portions of them and provincialise the rest.

There are three categories of subjects in this Report, namely, laws relating to international obligations; laws for territories not subject to any Provincial Legislature, and laws affecting any power expressly reserved to the Central Authority or any law for the time being in force. I agree that these should be reserved for what should now be described as the Federal Authority. The next thing I would suggest would be this, that it should be possible to make Federal all laws relating to commerce, banking, companies,

insurance, bankruptcy, contracts, sale of goods, and torts. Some of these overlap, but I have tried to make the categories wide in order to include every kind of legislation that might relate to those subjects. I would also make Federal the law of evidence and the law of criminal procedure. I have not included in this category the law of civil procedure. Even under the present system, under the Civil Procedure Code, the various High Courts have power to add to the rules laid down in the first schedule of the Civil Procedure Code, and that power should continue. With regard to the Penal Code, the difficulty felt was with regard to the States. It was considered that it might be difficult to persuade the States to make the Penal Code a Federal subject, for this reason, that several of the States in their different Penal Codes, which in broad outlines are based upon the Indian Penal Code, have got categories of offences which are not included within the Penal Code. Now, with regard to that, my submission would be that that difficulty could be got over in two ways. One is that the Penal Code could be made a Federal subject, with liberty to the Indian States only to add to the categories of offences laid down by the Penal Code; they could add, having regard to their local conditions, any kind of act or omission which they wanted to make penal.

Chairman: Would you mind helping me with regard to that? I have had some difficulty when I have been thinking of these things and trying to draw something up. Suppose a man in an Indian State commits an offence which is an offence in that State but which is not an offence in British India, and suppose that he escapes from that State to a Province of British India: what happens?

Mr. Zafrullah Khan: There are rules with regard to extradition. The States make representation to their Resident or Political Agent or whoever the officer may be.

Chairman: You would be willing to extradite a man from British India for something which is not an offence in British India?

Mr. Zafrullah Khan: That happens reciprocally. If a man has committed an offence in British India and has escaped to an Indian State, and the act does not happen to be an offence there, he is nevertheless extradited to stand his trial.

Sir Tej Bahadur Sapru: Is there any room for such a thing as extradition in a Federal Constitution?

Chairman: That is the point, and that is what I am putting. The writ would run all over India, would it?

Mr. Zafrullah Khan: That is a position which, whether you make these subjects Federal or not, you have to face. That is the present position. There are several matters which are offences in British India and which are not offences in Indian States. If you have federation without making any of these subjects Federal, you have still to face the position that a man may do an act which is an offence in British India and then escape to an Indian State, and that that act may not be an offence there. He has to be extradited under the present rules and has to stand his trial in British

be some power to meet those conditions that might be peculiar to a State or peculiar to a Province.

That is the submission that I have to make on this matter.

I think I may now proceed to submit my observations on the Report of the Finance sub-Committee.

With regard to paragraph 6, which deals with the extremely important question of the pre-Federation debt, I agree generally with the line that is there indicated, that is to say, that an Expert Committee, taking into consideration all the various factors that are indicated in this paragraph, and any others to which attention has not been drawn in this paragraph, should try to arrive at a conclusion as to whether any part of the pre-Federation debt of India should continue to be a debt which should be discharged, as it were, by the British Indian part and should not be a Federal debt. And I agree with regard to the principles, but there is one matter to which I want to draw particular attention.

There are several factors indicated in this paragraph, designed to show that the estimate arrived at by the Government of India would not be the correct guide in such a case; and, supposing that, after taking into consideration all those factors—for instance, taking the replacement value of certain assets and not merely their capital cost, and other things—the Expert Committee arrives at the conclusion not only that the whole of the pre-Federation debt is covered in that way, but that the Federation is taking over assets from British India which are in their value far in excess of the total amount of the pre-Federation debt. I submit that in that event there should be some resulting benefit to British India also. Just as you insist that, if any portion of the pre-Federation debt does not represent assets which are being taken over, then with regard to that portion British India shall be responsible, if you take over assets from British India which are in excess of the debt which you are taking over, then to that extent you are benefiting the Federation, and there should be some resulting benefit to British India or to British Indian Provinces. One cannot here go into details, but that is a principle which I would wish to be kept clearly in mind. This Expert Committee should not stop its work at a particular stage and say: "Oh, well, we find on general considerations that the assets which are being taken over are far in excess of the pre-Federation debt, and therefore the whole of the pre-Federation debt should be taken over by the Federation." They should go further.

Chairman: I quite agree we cannot go into details, but I want to see whether my mind is going in the same way as yours. Could you give me one concrete example?

Mr. Zafrullah Khan: For example, the Report of the Finance sub-Committee says:—

> "The Federal Authority will presumably succeed to the whole of the buildings and public works of all kinds which at present are the property of the Central Government."

When they take over all the buildings and public works, some sort of estimate of their value has to be arrived at, because, if they were not in existence, the Federation would have to build these themselves. They are taking all those over. Supposing the Expert Committee, on going into the matter, found that the value of these was 300 crores of rupees. Now the "uncovered debt" at present, apart from any other consideration, is supposed to be 172 crores. They are taking over property from British India which is worth 300 crores, which is more than double the uncovered portion of the debt. With regard to that property they would be saved the capital cost, or at any rate they are going to be saved the rent which they would otherwise have to pay if they had not got buildings of their own.

Lord Peel That is what I called the magnificent inheritance.

Mr. Zafrullah Khan Yes. If a man is succeeding to a magnificent inheritance, then he should at least be prepared to take over all the burdens of that inheritance without any kind of enquiry.

Colonel Haksar Of course, this point was fully discussed in our sub-Committee. It is a highly controversial issue. I do not desire to say anything about this point now. I merely say, so far as the concrete example taken is concerned, namely, civil buildings in British India, that it was pointed out there that they have been constructed from revenue, and that the revenue utilised for the purpose of the construction of these buildings was not exclusively British Indian revenue; it was revenue to which the States were all the time contributing. I do not want to say any more; I do not want to argue about it.

Mr. Iyengar: We challenge that.

Colonel Haksar: I shall deal with it at length.

Sir Akbar Hydari: I want to ask, with regard to the figures quoted, whether they mean the actual cost of construction of these buildings or the capitalised value of the rents which the Federal Government would otherwise have to pay. For instance, if you have constructed buildings costing 300 crores, but the Federal Government comes to the conclusion that we can do with buildings only worth, say, 6 lakhs a year, then surely we should only be debited with 100 crores.

Mr. Zafrullah Khan: All these matters are matters for the Expert Committee.

Colonel Haksar: That is right.

Mr. Zafrullah Khan: With regard to paragraph 8, I merely draw attention to the general principle, to which nobody can have objection, but which I shall have occasion to refer to subsequently. The principle laid down is that there is to be an equitable apportionment of burdens, and that to this end the Federal revenues should, as far as possible, be derived alike from the inhabitants of the Provinces and of the States. I leave that for a moment, and shall draw attention to it again.

I now pass to paragraph 11, in which the question of adjustments with regard to certain kinds of revenues is considered. The particular instance of inland Customs is referred to, and the sub-Committee say that it would not be an equitable plan in general for the Federation to attempt to buy up, so to speak, the existing rights of the States in such a matter. With regard to this, I merely wish to explain that it would not be a case of buying up at all. From the general trend of the paragraph, the sub-Committee evidently had that in view. I want to emphasise the fact that, whenever the question arises as to a certain tax at present imposed by any particular State being abolished or not—by the State of course—it must be kept in view that these kinds of taxes are imposed by the States on their own subjects for their internal revenue. When it is said they contravene certain principles of an ideal federation, the question arises that, if it is desired to abolish these in the general interests of the Federation, the State or States which levy such taxes must be compensated. As to this compensation, the position is perfectly obvious. The State levies taxes on its subjects for its own revenue. When it is asked to abolish a tax of that kind, and the tax is abolished, it would necessarily lapse to the subjects of that State from whom it was being recovered; and if compensation is asked for, the only method would be for that particular State to devise some other method of taxation which would place an equal burden, similarly distributed, upon its own subjects. In such a case there would be no reason for asking for compensation from the Federation, because the Federation could not tax all the Federal subjects in the interests of one particular State. The benefit of the abolition of such a case would go to the subjects of that State, and if there is any compensation it must come out of the pockets of those previously bearing the burden.

As to paragraph 12, I am strongly of the opinion that the recommendation contained in the last three lines should be given effect to, that the right to levy any unscheduled tax should rest with the Provinces or States, subject to the condition that the levy of the tax does not conflict with the Federal scheme of taxation.

In the next paragraph, 13, I wish to draw attention to the last two sub-paragraphs. The last sub-paragraph but one says:—

> "It will be understood that the powers of taxation enjoyed by Provincial Governments or States should be subject to the overriding consideration that they should not be exercised in such a manner as to conflict with the international obligations of the Federal Government under any Commercial Treaty or International Convention."

I have no objection to this so far as existing Commercial Treaties or International Conventions are concerned; and no one could possibly have any objection with regard to them, because they have to be implemented. With regard to the future, however, I have a suggestion to make which, though not strictly relevent to the question of finance, is bound up with it in this way, that otherwise it would be difficult to assent to this suggestion. My suggestion is

that, in future, this restriction should apply to the Provinces only if these international obligations and Commercial Treaties or International Conventions are concluded by the Federal Government with the consent or approval, or at least acquiescence, of—if not all the Federal Units—at least a certain proportion of them; for instance, three-fourths. Otherwise it would be possible for the Federal Government to go on entering into these International Conventions if it found that it did not affect its own revenues and would only affect the revenues of the Provinces and of the States. If this restriction over the powers of taxation enjoyed by Provincial Governments and States is to be maintained, their consent in regard to entering into these international obligations must also be obtained.

The last sub-paragraph reads --

> " No form of taxation should, we think, be levied by any Unit of the Federation on the property of the Federal Government."

My submission with regard to that is that it obviously should not apply to municipal taxation; for instance, water rates on buildings owned by the Federation, or to other taxes which are mostly in the nature of charges for services rendered. Even with regard to Provincial taxation, where a tax is a charge for service rendered there should be no restriction upon it.

Chairman: Would you regard the property as a sort of enclave?

Mr. Zafrullah Khan: What I am contemplating is a tax, so far as the Provinces are concerned, like the special Motor Tax which is in existence in the Punjab, for instance. That is levied for the purpose of the maintenance of Provincial communications, and every vehicle which uses the Provincial communications is liable to pay that tax. If motor cars and lorries and so on, which belong to the Federal Government, use the Provincial roads, to which no contribution is being made by the Federal Government, that kind of tax should not be restricted under that provision.

Sir Akbar Hydari: We had that in view, and it is in view of that that this last sentence was added. We had in view the question of municipal taxation, and so this last sentence was added which says:—

> " The precise form in which this principle should be expressed should be examined by the Expert Committee."

Mr. Zafrullah Khan: I am very glad to hear that from Sir Akbar, and it is only because there is that sentence, and because that examination is going to take place, that I am now putting my suggestion on record so that it may be considered by the Expert Committee.

Sir Provash Chunder Mitter: Does Mr. Zafrullah Khan mean that, for example, transit duties on a purely Provincial road would be a matter for examination by the Expert Committee; but that, if there is a road from one Province to another, or a light railway, the Expert Committee would deal with it differently?

Mr. Zafrullah Khan: Well, transit duties are expressly forbidden by the Committee, and I have raised no objection to that.

Mr. Jayakar: You are speaking of taxes on the property of the Federation. The case which has been suggested would not fall into that category. You are speaking of property of the Federal Government situated within the limits of Provincial territories. The question would not arise in that case.

Mr. Zafrullah Khan: Paragraph 14 deals with Grants to Constituent Units. The first sub-paragraph contemplates a case of grants both to Provinces and to States. The last sub-paragraph says that:—

> "The reverse process should also be possible. Any Province, with the assent of its Legislature, should be free to make a grant for any purpose to the Federal Government."

Well, I apprehend that the words "any State" are omitted for this reason, that the States being sovereign States are at liberty to give away anything if they want to do it. If that is the reason for the omission, I have nothing further to add.

Lord Peel: That is right.

Mr. Zafrullah Khan: Then paragraph 15 deals with Taxes on Income, and at the top of page 9 raises the question that the distribution of the proceeds of Income-tax among the Provinces—

> "may also form a very convenient means of alleviating the burden of two or three of the Provinces which, under the present system, are universally admitted to be poorer than the others."

I think this is a principle to which, without very great further consideration, I would not be willing to give my consent. That sounds very much like taxing one Province, and handing over the proceeds to another. That is a principle which, on the face of it, would be indefensible.

Sir Maneckji Dadabhoy: May I ask a question? If it is to be a Federal form of Government, why do you draw that distinction? Why do you say that, one Province being poor, the revenues of another Province should not go to the assistance of it?

Mr. Zafrullah Khan: It is exactly because it is going to be a Federal Government that I do draw that distinction. If everything were to come into a pool, and everybody was to share according to their needs, and so on, it would not be a Federal Government; it would be a unitary Government looking after the whole country impartially—it does not matter where it gets its revenue or where it spends it. It is because it is going to be a Federal Government, in which primarily, subject to overwhelming considerations, each Province must raise its own funds, that I am saying that this is a principle to which you cannot give consent.

Lord Peel: Would you go to the other side, and make it incumbent on the Federal Government to hand back to the particular

Province the Income-tax raised in that particular Province, irrespective of whether the Income-tax was earned in that Province or not?

Mr. Zafrullah Khan: Well, generally I would accept that principle.

Mr. Iyengar: No, no, it would certainly be very dangerous.

Mr. Zafrullah Khan: But the principle could be deviated from to this extent, that the payment back of the Income-tax may be made on other considerations which relate only to the real source from which the tax is derived, and not on considerations such as that, because a certain Province has not got enough Provincial resources and another has, that Province does not compare favourably with another Province. I do not want to raise a controversy between different Provinces, but, for instance, supposing on behalf of Bengal it were urged that, owing to the permanent settlement, their proceeds from Land revenue are not so large as in other Provinces where there is no permanent settlement. That is not a ground on which Bengal should ask for relief or an extra allotment from the Federal Government.

Sir Maneckjee Dadabhoy: Then in what way would you give relief?

Mr. Zafrullah Khan: In such a case a Province has got to cut down its expenditure. The way in which such a case would be dealt with is this. In the general adjustment of sources of Provincial and Federal revenue, in allotting the sources you can allot them in such a fashion that you could equalise the Provinces, as it were. If one Province gets something more from one Provincial source, another Province could get more from another Provincial source. Otherwise, you would have to agree to the general principle that, if certain Provinces with slender Provincial resources continue to spend on the same scale as Provinces which have bigger Provincial resources, you have to supplement their expenditure from the Centre. If you were to go on in that way I do not know where it would lead you to. It would be putting a premium on extravagance. A Province might spend money very heavily on perfectly legitimate subjects such as nation-building, sanitary, public health services, and so on; and in that way they might habitually exceed their Provincial Budget. Then they would make a claim in regard to these things on the ground that they have not wasted their money but had spent it properly.

Lord Peel: I do not think that is a fair definition of a poor Province—that it expends a good deal of money. It may be extravagant, but I think it is a question of the resources it has got and not of what it spends.

Mr. Zafrullah Khan: Of course there may be exceptions. In some cases there may be overwhelming considerations, and it may not be possible to help a Province in any other way; but I am talking of general principles.

Then in the next sub-paragraph, dealing with Income-tax, the sub-Committee have recommended a departure from the general rule that the party to collect a tax should be the party who is going to receive the proceeds thereof. The sub-Committee say:—

> "But the difficulty might be met, at all events partially, if the Federal Finance Minister, before introducing any proposal to vary the Income-tax rate, were required to consult Provincial Finance Ministers."

If this consultation is to have no more weight than the opinion of assessors in a Sessions Trial in India (which does not bind the Judge in any way at all), I do not see that much would be gained. The tax being primarily a tax the proceeds of which have to return back to the Provinces, I think, before the rate is varied by the Federal Finance Minister, it should be made obligatory upon him to obtain the consent of a certain percentage of the Provincial Finance Ministers to his proposals before the assessment could be brought into existence—say three-fourths of the Provincial Finance Ministers.

In the last sub-paragraph of paragraph 15, the sub-Committee say that Provinces, if they so desire, may be empowered to raise, or appropriate the proceeds of, a tax on agricultural incomes. So far as empowering a Province is concerned, I have no objection to it; but one matter should be kept in mind, that some Provinces have to a very large extent got that power already—that is to say, Provinces where the permanent settlement does not operate. They have, under their various Provincial Land Revenue Acts, the power at recurring settlements to raise the rate of Land revenue, and that is a tax on agricultural incomes which is liable to an increase or decrease having regard to various factors. I think this power should ordinarily be considered sufficient in those Provinces.

Paragraphs 16 and 17 deal with Provincial Contributions and States' Contributions. Paragraph 16 says that, having regard to the recommendation of the sub-Committee that the proceeds of Income-tax, apart from Corporation tax, should be paid back to the Provinces, whatever may be the principle on which the payment back is to be made, if as a result there is a deficit in Federal revenues, that should be made up by contributions from the Provinces, divided bewteen them either on the basis of their respective revenues or of population or according to some other defined method. This is a matter with regard to which I would draw attention to the general principle laid down in paragraph 8, that to Federal revenues British Provinces and Indian States—that is to say all the Units of the Federation—have to contribute equally. You start the Federation without the Income-tax; that is not to form a head of Federal revenue. Then you find that Federal taxes and Federal sources of revenue do not bring you in enough to meet all Federal charges. I really have not been able to understand why it should be obligatory, in the first instance, upon the Provinces to make up that deficiency. Income-tax is not being levied in the States at all. If there is a deficit in the Federal revenues why

should the Provinces be asked, in the first instance, to make it up to the extent to which they are benefiting from Income-tax? Income-tax, I am aware, is a Central tax at present, and all the Provinces contribute at the same rate. I cannot understand the principle that, in future, the Provinces alone should, in the first instance, contribute towards a deficiency in the Federal receipts. I maintain that all Units must contribute on an equal basis.

Paragraph 18 deals with cash contributions made by certain States towards Central revenues. I agree with the general principle that there is, generally speaking, no place for contributions of a feudal nature under the new Federal Constitution. But before any of the other recommendations are carried out, I think the enquiry suggested in this paragraph should be completed. Wherever it is found that the sum being paid is only a due of a feudal nature, I would have no objection to its abolition, whether gradual or immediate as circumstances may decide. But if the Expert Committee were to find that certain contributions by certain States were not feudal at all, but in the nature of payment for services rendered, then the payment would not be a mark of feudal inferiority; it would be on the basis of contract. It would mean payment for certain things done or received, in respect to which the State, instead of paying a lump sum, is paying a certain sum each year. Therefore in such a case there would be no ground for its abolition on the argument that a feudal due was being levied.

I come now to paragraph 20. With regard to the first sub-paragraph, I hope the Maritime States who come into the Federation will be persuaded that the administration of Customs at their Ports should be taken over by the Federal Department. I am not suggesting anything with regard to allocation and distribution, but only with regard to the collection and administration at the Ports. It would make for uniformity and the elimination of confusion if this were done. The only question which would arise would be the distribution of patronage with regard to the people employed, and that could be easily adjusted as between the Federation and the particular State concerned.

With regard to the last part of the second paragraph, at the bottom of page 10 and the top of page 11, in the absence of the findings of the Expert Committee there suggested, I would not be prepared to express any definite opinion on this particular point. The situation is a very complex one with regard to certain Maritime States and interior States and so on, and it is difficult to say what would be an equitable principle. It would be possible to express an opinion only when the data have been collected and the Expert Committee has made its Report. I do not suggest however, that, unless that is done, we cannot go forward. This is a detail which can be dealt with later.

Paragraph 21 deals with the Emergency Powers of the Federal Government, and says:—

"In order to ensure that the Federation is not left resourceless in a grave emergency, and also to secure the object

the question of properly constructing your Federal Government If the Federal Legislatures are properly representative of the Units that problem should vanish.

I think it is agreed by all that Income-tax should be a Provincial subject, because the States take no part, because it is a "direct" tax, by common agreement a proper Provincial source, and should be raised by the party which enjoys the benefit. I think it is not out of place to stress the Income-tax payers' point of view. Formerly administration was not centralised, and in those days I believe the position was chaotic And then, too, Income-tax was very low. To-day Income-tax rates are higher; the burden is heavier, and it is from the Income-tax payers' viewpoint most essential that there should be uniformity of administration and of the rate I do not think that administration will present any particular difficulty, however it is centralised. But as regards uniformity of rate I must confess that I can add no more to the Report than what is already written I and my colleagues have discussed this question at great length, but I am afraid we have not devised any scheme to reconcile a satisfactory provincialisation of the Income-tax with the necessity of uniformity of rate.

I should like to ask whether the sub-Committee contemplated that the Expert Committee would take public evidence in India, as we might later on desire to give more evidence The question did arise whether the body should sit in India.

Sir Maneckjee Dadabhoy Certainly India; and both in the States and Provinces.

Mr. Benthall. With regard to the three species of taxes, the Corporation Tax, the Terminal Tax and the Export duties, we consider that all these are bad taxes. They are taxes on industry and on commerce and definitely handicap trade. We recognise that it is impossible at present to do without these, but we should like to have it put on record that the principle of these taxes is wrong. I admit that that is a pious hope, but it is parallel with the case of the States' Customs, and it is a pity to have it on record that the sub-Committee approved of them in principle. With regard to the Export duties, they are in principle a bad tax, but they might possibly be justified in the case of a monopoly I am going to support Sir Provash in one thing he said. I am convinced that you will never get a good start with the constitution unless the Provinces are satisfied with the financial settlement. I do not support the illustration which Sir Provash gave us from the constitution of the United States.

Sir Tej Bahadur Sapru: It is not open to the States to levy taxation

Mr. Benthall: But I do think that the Expert Committee might be asked to consider whether it is not possible to provide that, where an Export duty is placed on a commodity which is a monopoly of one Province or of a few Provinces, provision should

transition, and they started with their existing sources of revenue without causing any great disturbance to the financial system existing at that time.

Similarly, when we come to deal with pre-Federation debt, as set out on page 5, we find this principle laid down:—

> "It therefore seems to us that, if it were found after investigation by the Expert Committee, that all the obligations were covered by assets"—

and I would take in here the point made by Sir Purshotamdas Thakurdas yesterday, "taking it in its wider sense"—

> "the whole of the pre-Federation debt should be taken over by the Federation. While, however, this seems to us to be the probable result of a close investigation, we do not rule out the possibility of a finding by that Committee that a certain proportion of the pre-Federation debt should equitably be classified in the first instance as 'Central'; that is to say, that its service (including a due proportion of sinking fund charges) should be taken to be a 'Central' and not a Federal charge."

Now, that principle, together with the reservation, is also acceptable to most of us.

Then we come to other clauses in the Report. For instance, in paragraph 8 the sub-Committee deals with the question of the allocation of resources between the Federation and its constituent Units. and there they again lay down certain principles:—

> "It is obvious that, if there is to be an equitable apportionment of burdens and smooth working of the constitutional machine, the Federal resources should, as far as possible, be confined to revenues derived alike from the inhabitants of the Provinces and of the States, and which can be raised either without any action on the part of the individual States or by an agreement with them of simple character, readily enforceable. This principle implies, very roughly, that the Federal sources of revenue should be confined to 'indirect' taxes."

This is a principle which has been more or less followed in many of the federal constitutions. The Report goes on:—

> "If, however, a 'direct' tax could be found which complied with the above conditions, it would be highly desirable to include this among the Federal resources, for the following reasons."

I will not read that.

Then again, there was agreement with regard to Corporation tax, and in paragraph 9 it is stated:—

> "The most obvious 'direct' Federal tax is Income-tax. We think that it would be desirable, if it were possible, that some of the Income-tax receipts in all the Units of the

> Federation should, in case of necessity, be available as a Federal resource; but we recognise that this is, in general, a development which must be left to the future and depend on free negotiation between the Federal Government and the federating States subsequent to federation."

It will be noticed that the authors of this Report do not bind down the various Units to any hard and fast rule at the present moment. The rule as laid down here, is sufficiently elastic to be able to answer the needs of the future as occasion may require.

Then, in paragraph 10, you have Classification of Revenues, and in that classification I would particularly invite your attention to some of the big items. External Customs, including Export duties, is the first item; and then you have Salt; Export Opium; Excises on articles on which Customs duties are imposed (with the exception of Excises on Alcohol, Narcotics and Drugs); Receipts from Federal Railways, Federal Posts and Telegraphs, and other Federal commercial undertakings, Profits of Federal Currency; Corporation tax (subject to paragraph 9); Contributions from Provinces; and Contributions from States. Then they go on to refer to the Provincial Revenues.

I will not go through the entire Report paragraph by paragraph, but I will take up one or two important paragraphs just to show that there are certain important principles which have been settled and agreed to. Take, for example, paragraph 14, which deals with the important question of Grants to Constituent Units. I will just read out two or three lines from that paragraph. It says:—

> "It seems important that the constitution should, in one respect, be less rigid than the existing one, under which it has been authoritatively held that there is no power to devote Central resources to the Provinces or Provincial resources to the Centre. It should, we think, be open to the Federal Government, with the assent of the Federal Legislature, not only to make grants to Provinces or States for specified purposes, but also, in the event of its ultimately finding that Federal revenues yield an apparently permanent surplus, to be free, as a possible alternative to reduction of taxation, to allocate the surplus proceeds to the constituent Units of the Federation, both States and British Indian Provinces."

Now, I will only remind the Committee that this power to allocate the surplus proceeds to the constituent Units of the Federation is a very orthodox rule which has been adopted in various constitutions, including that of Australia.

Similarly, when you come to paragraph 15, you find their view with regard to taxes on Income.

The paragraph in question runs as follows:—

> "We are agreed that such taxes should still be collected from the whole of British India by one [illegible] lised adr[illegible]

trative service. Most of us are also of the opinion that uniformity of rate should be maintained, since variations of rate may lead to unfortunate economic consequences, such as discrimination between industries in different Provinces. Some of us take the opposite view, both because of the constitutional difficulty mentioned below and because of the difficulty of securing uniformity in all Units. The subject is clearly one to which the Expert Committee should devote much attention."

Now comes the agreement:—

"In any case, we are all of the opinion that the net proceeds should, subject to the special provisions mentioned below, be re-distributed to the Provinces. On any other basis it will be impossible to secure, even ultimately, a uniformity of Federal burdens as between the Provinces and the federating States, or to avoid a clash of conflicting interests in the Federal Legislature when there is a question of raising or lowering the level of taxation."

Now, later on, the sub-Committee say:—

"The distribution of the proceeds of Income-tax among the Provinces (even though there may initially be countervailing Contributions to the Federal Government, as proposed in the next paragraph) may also form a very convenient means of alleviating the burden of two or three of the Provinces which, under the present system, are universally admitted to be poorer than the others."

I would not like the Committee to entangle itself in the controversy as to the criteria by which we are to judge of the poverty of a Province or not. That is a matter of common knowledge, and we all know which Province require more help than the others: but the principle laid down in this particular paragraph is by no means unknown to other federal constitutions, and I am only pointing out that they have followed the orthodox line there.

Then we come to paragraph 16:—

"We have, subject to certain reservations, proposed the allocation to the Provinces of the proceeds of taxes on Income, without, so far, any corresponding reinforcement for the Federal Government. If the Expert Committee unexpectedly found that Federal resources were such as to give a secure prospect of recurring revenues sufficient to meet this loss immediately (and also a loss in respect of the heads dealt with in paragraph 17 below), many difficulties would, of course, be removed. But on the provisional basis set out in paragraph 4, we are bound to assume that there may be a substantial Federal deficit, due to the allocation of Income-tax to the Provinces. The deficit, in so far as it arises from the above cause, should, we suggest, be met by Contributions from the Provinces, to be divided between them either on

the basis of their respective revenues or of population, or according to some other defined method."

That is a question of great importance, no doubt; but it is a question of detail which I think would come properly within the sphere of experts.

"The Expert Committee should consider what is the most appropriate basis. This basis need not necessarily be the same as that on which the Income-tax proceeds are distributed."

There, again, the rule laid down is sufficiently elastic.

Then we come to paragraph 17, which is of great importance from the point of view of the Indian States.

"In the scheme proposed above, the Federal burdens will be spread over all the Units of the Federation in a precisely similar manner except for—

(a) The above-mentioned Contributions from the Provinces, until such time as they are finally abolished;

(b) such direct or indirect contributions as are, or have been, made by certain States, of a kind which have no counterpart in British India; and

(c) varying measures of immunity in respect of Customs and Salt enjoyed by certain States."

I will not enter into the thorny question of States' contributions beyond saying that I very strongly hold that, in the case of a federal constitution, there is absolutely no place for the payment of any tributes. We will have to find a different name for any contribution which may have to be made by an Indian State as a matter of agreement and not as a matter of compulsion.

Paragraph 18 deals with the case of cash contributions from States and ceded territories. It is a question in which I understand the Indian States are vitally interested. I will particularly invite the attention of my friends from the Indian States to some of the recommendation of this Committee.

"The direct or indirect contributions from the States just referred to may arise, or are alleged to arise, under the following heads:—

(i) cash contributions;

(ii) value of ceded territories; and

(iii) contributions in kind for Defence by the maintenance of State Forces.

(i) Cash contributions from States (till recently known as tributes) have arisen in many different ways, and it has been impossible for us to examine the cases of individual States. Nevertheless"—

and this is the principle which the Committee lay down—

"we think that there is, generally speaking, no contributions of a feudal nature under the

Constitution; and only the probability of a lack of Federal resources at the outset prevents our recommending their immediate abolition. We definitely propose that they should be wiped out *pari passu* with the Provincial Contributions discussed in paragraph 16 above."

I have already said that, in my opinion, there is no place for tributes in a federal constitution. If contributions have got to be continued, even though it may be for a limited period, it must be a matter of agreement. It must be distinctly understood that it is of a temporary character, in order to tide over some financial crisis which may exist for the next few years.

I will not deal with paragraphs 19 and 20 now, which deal with the question of the State Forces, the Maritime States and Kashmir.

Then I come to paragraph 21, which deals with the emergency powers of the Federal Government. Now, here what is stated is:—

"In order to ensure that the Federation is not left resourceless in a grave emergency, and also to secure the object referred to in the next paragraph, we regard it as important that there should be an emergency power in the Federal Government, with the approval of the Federal Legislature, to call for contributions from all the Units of the Federation on some principle of allocation to be based on examination by the Expert Committee."

Now, here I would point out that the principle laid down is qualified by the use of the words "grave emergency." It would not be open to the Federal Government to call upon an Indian State, merely because there was a deficit in the Budget, to make a contribution. The necessary condition is that it must be a grave emergency, and that that power must be exercised by the Federal Government—and it is hardly necessary for me to point out that the Federal Government will not be an outside body, in which the Indian States will have no part or lot; it will be as much a Government of theirs as it will be a Government of ours.

I will not deal at length with paragraph 22, which deals with the question of the Borrowing Powers of the Units and the Security of Post-Federation Debt; but I would only invite attention to a question of principle which is laid down in the last two lines of that paragraph; and I submit again that that is a very sound principle:—

"We are of the opinion that there should be no power in the Units to borrow externally without the consent of the Federal Government."

That is obviously for the reason that the external investor or lender must look to the Federation, and can only advance money on the credit or the security that may be offered by the Federation as a whole. Therefore I will say that a good many principles have been laid down and have been agreed to. The working out of these principles has been left to the Expert Committee.

Now, when I come to the question of the Expert Committee, which is dealt with in paragraph 4, there are just one or two questions which occur to me. I have been reading the Proceedings of the Federal Finance sub-Committee, and I *do not* find—it may be that I have overlooked any particular passage or any particular part of the proceedings, but I *do* say that I *do not* find—that the question of the character and composition of this Expert Committee was *specifically* considered or debated there. Therefore, it came to me really as a *surprise* yesterday when it was suggested by some gentleman in this Committee, that this Expert Committee shall be a Committee purely of experts. Secondly it came to me as a matter of surprise when it was suggested that this Expert Committee would submit its Report to His Majesty's Government. Thirdly, it came *to me as a surprise when it was seriously contended that the decision* of His Majesty's Government will be imposed upon the Federation. My conception of federation is that it is a matter of contract between the federating units You and we must arrive at some definite agreement, and that agreement must be embodied in our constitution and must be *endorsed* by *the Federal Legislature*, which will be as much your Legislature as ours; and ultimately it must be endorsed by the Federal Government, which will be, again, as much your Government as our Government

Now, Sir Akbar Hydari, yesterday, in the course of the debate, made one very significant remark; and, lest I do him injustice. I shall read what he himself said. At pages 35 and 36 of yesterday's proceedings, Sir Akbar Hydari is reported to have said this:—

> "They will have to be endorsed by the different federating Units, not by the Federal Government. What we hold is that this is one of the conditions precedent to the federating Unit's determining whether it will federate or not"

At this point Mr. Jayakar intervened and said.—

> "I *do not quite understand the point raised by Sir Akbar*. He said he was expressing not only his own view, but that of the States Delegation. Is it his view that there is going to be no Federation until this Expert Committee has been appointed, has made its Report and submitted it to the Units, and they have agreed to it?

To that Sir Akbar Hydari replied:—

> "That is the *position so far as* the Indian States are concerned."

Sir Akbar Hydari: Would you read what I said on page 38? That is clearly what I meant.

Sir Tej Bahadur Sapru: I will certainly do so. Sir Akbar spoke as follows:—

> "*I should like to make it clear that it is perfectly open* for this Committee to meet and make its Report; and it is perfectly possible to frame your Federal Constitution, which you have decided will be presented to the federating Units,

> Constitution; and only the probability of a lack of Federal resources at the outset prevents our recommending their immediate abolition. We definitely propose that they should be wiped out *pari passu* with the Provincial Contributions discussed in paragraph 16 above."

I have already said that, in my opinion, there is no place for tributes in a federal constitution. If contributions have got to be continued, even though it may be for a limited period, it must be a matter of agreement. It must be distinctly understood that it is of a temporary character, in order to tide over some financial crisis which may exist for the next few years.

I will not deal with paragraphs 19 and 20 now, which deal with the question of the State Forces, the Maritime States and Kashmir.

Then I come to paragraph 21, which deals with the emergency powers of the Federal Government. Now, here what is stated is:—

> "In order to ensure that the Federation is not left resourceless in a grave emergency, and also to secure the object referred to in the next paragraph, we regard it as important that there should be an emergency power in the Federal Government, with the approval of the Federal Legislature, to call for contributions from all the Units of the Federation on some principle of allocation to be based on examination by the Expert Committee."

Now, here I would point out that the principle laid down is qualified by the use of the words "grave emergency." It would not be open to the Federal Government to call upon an Indian State, merely because there was a deficit in the Budget, to make a contribution. The necessary condition is that it must be a grave emergency, and that that power must be exercised by the Federal Government—and it is hardly necessary for me to point out that the Federal Government will not be an outside body, in which the Indian States will have no part or lot; it will be as much a Government of theirs as it will be a Government of ours.

I will not deal at length with paragraph 22, which deals with the question of the Borrowing Powers of the Units and the Security of Post-Federation Debt; but I would only invite attention to a question of principle which is laid down in the last two lines of that paragraph; and I submit again that that is a very sound principle:—

> "We are of the opinion that there should be no power in the Units to borrow externally without the consent of the Federal Government."

That is obviously for the reason that the external investor or lender must look to the Federation, and can only advance money on the credit or the security that may be offered by the Federation as a whole. Therefore I will say that a good many principles have been laid down and have been agreed to. The working out of these principles has been left to the Expert Committee.

Now, when I come to the question of the Expert Committee, which is dealt with in paragraph 4, there are just one or two questions which occur to me. I have been reading the Proceedings of the Federal Finance sub-Committee, and I do not find—it may be that I have overlooked any particular passage or any particular part of the proceedings, but I do say that I do not find—that the question of the character and composition of this Expert Committee was specifically considered or debated there. Therefore, it came to me really as a surprise yesterday when it was suggested by some gentleman in this Committee, that this Expert Committee shall be a Committee purely of experts. Secondly it came to me as a matter of surprise when it was suggested that this Expert Committee would submit its Report to His Majesty's Government. Thirdly, it came to me as a surprise when it was seriously contended that the decision of His Majesty's Government will be imposed upon the Federation. My conception of federation is that it is a matter of contract between the federating units. You and we must arrive at some definite agreement, and that agreement must be embodied in our constitution and must be endorsed by the Federal Legislature, which will be as much your Legislature as ours; and ultimately it must be endorsed by the Federal Government, which will be, again, as much your Government as our Government.

Now, Sir Akbar Hydari, yesterday, in the course of the debate, made one very significant remark; and, lest I do him injustice, I shall read what he himself said. At pages 35 and 36 of yesterday's proceedings, Sir Akbar Hydari is reported to have said this:—

> "They will have to be endorsed by the different federating Units, not by the Federal Government What we hold is that this is one of the conditions precedent to the federating Unit's determining whether it will federate or not"

At this point Mr Jayakar intervened and said:—

> "I do not quite understand the point raised by Sir Akbar. He said he was expressing not only his own view, but that of the States Delegation. Is it his view that there is going to be no Federation until this Expert Committee has been appointed, has made its Report and submitted it to the Units, and they have agreed to it?

To that Sir Akbar Hydari replied:—

> "That is the position so far as the Indian States are concerned."

Sir Akbar Hydari: Would you read what I said on page 38? That is clearly what I meant.

Sir Tej Bahadur Sapru: I will certainly do so. Sir Akbar spoke as follows:—

> "I should like to make it clear that it is perfectly open for this Committee to meet and make its Report; and it is perfectly possible to frame your Federal Constitution, which you have decided will be presented to the federating Units,

so far as the Indian States are concerned, for each of them to take or to leave, on the basis of the Report."

Sir Akbar Hydari: Please read on.

Sir Tej Bahadur Sapru: Sir Akbar continued as follows:—

> "Before a State comes in, it must have some sort of picture of the situation and definite proposals of some sort to show what are the financial implications of its entering the Federation. That is all that I say. It is perfectly possible for you to construct your Federal finance proposals in any way you like, and it will be perfectly open to us to come into the Federation or not. You will have to balance the advantages and disadvantages of our States coming in or not according to the way you construct your picture."

The fact of the matter is this, and I say it with all humility, that the position taken by Sir Akbar was not quite consistent with the position taken by the Indian States Delegation. I appeal from Sir Akbar of yesterday to Sir Akbar of ten days ago. Now may I read from Sir Akbar's speech in the Federal Finance sub-Committee on September 30th, 1931. It will be found at page 157 (*a*) in the report of that day. He said, in the course of the debate on the question of ceded territory and things of that kind, with which the Federal Finance sub-Committee was engaged:—

> "I think that we want to say this much, that assuming that the conditions that we evolve in the Federal Structure Committee constitutionally are such that an all-India Federation is brought about (and that is the hope for which I am working), then I take it that our present object here is to ascertain how we could, from the financial side, approach the financial problems involved in federation in such a way as to make federation practically possible."

Now comes a very important sentence:—

> "I for my part can see only one way, and that is to start the Federation immediately, if we are going to have it and not wait for a very long time: to start it with the figures and the facts as they stand at present, both with regard to receipts and with regard to expenditure. In other words, take the expenditure with regard to the Indian State Forces—take it as for the present continuing to be borne by the Indian States without asking any *quid pro quo* from the Federation as a whole; take the surplus of ceded territories—whether there is a surplus or not. All that I would keep apart; take facts as they are."

Now, with every word and with every syllable of that statement I am in complete agreement; but, while I am prepared to support the position taken up by Sir Akbar Hydari on the 30th September, 1931, I find it difficult to reconcile his speech of that date with the statement which he made yesterday.

I should like to quote another remarkable sentence from his speech of the 30th September, which appears on page 159. After dealing with various objections, Sir Akbar Hydari delivered himself as follows:—

> "All these adjustments and enquiries are so detailed that they *would require an immense amount of calculation and* investigation; and if we are going to wait until they are completed and start even in the States on a parity of conditions, we shall have to wait almost until the Greek Kalends. Therefore, let us start with things as they are, and then take up your enquiry, and in the enquiry try and see how far the claim of each State is a plus claim (it is just possible that it might be a minus claim) in view of various burdens which they bear and should not bear."

Then Colonel Haksar interposed and said:—

> "There will be no minus claim in the Federation."

Sir Akbar Hydari then continued and said:—

> "I, *for one, would be quite satisfied if there were no such* investigations, so far as my State is concerned, but that is perhaps on account of a variety of circumstances."

I will leave the references to his own State; but he goes on to say:—

> "I think that, with regard to all these claims that have been made, all that is required is to let the claims which are *conceded be placed on the same footing and brought about* and adjusted according to some principle that may be agreed to by all. Do not allow the investigation of these claims and the *determination of them to delay federation.*"

That is very significant. I respectfully beg to express my whole-hearted concurrence with these sentiments which Sir Akbar Hydari *voiced*.

Later on, on page 161 of the proceedings of the same day, Sir Akbar Hydari said this:—

> "I am at the moment speaking for my State, and I say that I will make no claim of any kind. I will try and start the Federation, so far as my State is concerned, with whatever revenues you are getting from me in the shape of your Customs—Sea Customs—or Salt, and all those sources of revenue from which you are levying."

I admire these generous sentiment of Sir Akbar Hydari.

Sir Akbar Hydari: To which I adhere.

Sir Tej Bahadur Sapru: Then I should like to draw the attention of the Committee to a very remarkable statement made by my friend, Colonel Haksar, who, I believe, occupies a very peculiar position in the organisation of the Indian States. I cannot be more emphatic than Colonel Haksar was on that occasion, and this is what he said. It is on page 170:—

> "What I want to explain is that all the States are extremely anxious that federation should come."

Sir Akbar Hydari: There are no first or second thoughts in this case. My thoughts are all of the same category; they are the best.

Sir Tej Bahadur Sapru. The question really arises, what is the way out? So far as I am concerned—and I believe it is the sentiment of every one of us on this side—I wish to say that nothing is further from our intention than that, by asking the Indian States to come into the Federation, we should put a heavier burden on them, or that matters in which they feel so very keenly should not be carefully and impartially investigated. But, at the present moment, it is quite clear that we can only come to agreement on questions of principle. Questions of detail must be left to the experts. When I talk of experts, I do not mean mere dry financial experts who can forecast with their figures and with their theories, but I mean men who know the subject from practical experience, men who have intimate and direct knowledge of the working of the financial system in British India on the one side, and of the financial systems working in the different Indian States on the other side; and men who will meet together, discuss things between themselves, and submit a Report.

When that Report is ready, before whom is it going to be laid? I do suggest that it will be open to Their Highnesses to demand that the Report of the experts shall be laid before them. I do suggest that it should equally be laid before us; but ultimately you cannot avoid—unless you want a decision to be imposed upon you by a third party, which is wholly inconsistent with the principle of Federation—the fact that that Report must go before the Federal Government, and be endorsed by the Federal Government, which shall be ultimately responsible for enforcing those decisions This is exactly what was done in South Africa When I referred to Section 188 of the South African Constitution, I made a very friendly suggestion to the Indian States. I am afraid my point was not appreciated yesterday. It was pointed out by Lord Lothian in the course of a remark which he interjected, that the Constitution of South Africa was not of a Federal character. That is quite true, but nothing turns upon the question as to whether the Constitution is Federal or Unitary. It was a method or a procedure adopted for settling relations between the Central Government and the different units, which is exactly the same problem as that with which we are face to face; and I will read the section again so that my friends may see that, if this procedure is followed, they will have their representatives on the Committee, we will have our representatives on that Committee, and the President will be an outsider who will be a member of the Imperial Services. If you do not like to have a member of the Imperial Services you can have any outsider; I will have no objection to that. Now, Section 118 of the South Africa Act provides as follows:—

> "The Governor-General in Council shall, as soon as may be after the establishment of the Union, appoint a commission, consisting of one representative from each province, and presided over by an officer from the Imperial Service, to

H.H. The Nawab of Bhopal: The question requires detailed and careful examination by the Expert Committee, to arrive at a proper adjustment of these charges as between the Federal Government and British Indian Provinces. In dealing with this matter the Expert Committee will, I am sure, take into full consideration the pensionary charges in respect of pre-Federation services of officers still in service, and of any proportionate pensions that may be sanctioned in consequence of the constitutional changes for officers who may not wish to serve under the Federal Government of the future. I feel confident that, as a result of this expert enquiry, the burden of pensionary charges of the Federal Government will be considerably lightened. The Provinces will, of course, contribute their share towards the payment of these charges in the same manner as in the case of purely British Indian debts.

As to the remaining heads of expenditure agreed to be federalized, there may still be, I venture to submit, considerable scope for economy, without impairing the efficiency of the service, which can be effected by controlling expenditure more strictly. In this connection I would like to emphasize that, having regard to the present financial position of India, the need for drastic cuts is clearly indicated, and the framing of the Federal Expenditure Budget must proceed on this basis. As it is, even since the Memorandum of the Finance Department was prepared, proposals have been made by the Government of India whereby considerable economies are being effected under the various heads of expenditure, the liability in respect of which will, in future, be Federal. We are happy to endorse the suggestion of the Committee:—

> "that all the governments should exercise the strictest economy and that their scale of expenditure should be reviewed and reduced to a minimum."

It is to be clearly understood, however, that such a review would be made by the governments of the federating Units themselves, and not by the Federal Government.

We agree that the deficits of Chief Commissioners' Provinces should be a Federal charge, and that the North-West Frontier Province, when it is made into a Governor's Province, should receive a subvention from the Federal Budget, to provide for the difference between revenue and expenditure. If the Income-tax is made a Provincial source of revenue, the budgetary deficit of these Provinces and areas will decrease by at least about one crore, and with the better development and utilization of all the available resources, as, for example, forest resources of the Andamans, the gap between the revenues and expenditure would further be abridged.

Now, my Lord, turning to the revenue side of the problem, the first proposition I should like to put forward on behalf of the States is that the Federal revenue should be strictly confined to the specific cases agreed upon to be federalised, and that is by "indirect"

H.H. The Nawab of Bhopal: The question requires detailed and careful examination by the Expert Committee, to arrive at a proper adjustment of these charges as between the Federal Government and British Indian Provinces. In dealing with this matter, the Expert Committee will, I am sure, take into full consideration the pensionary charges in respect of pre-Federation services of officers still in service, and of any proportionate pensions that may be sanctioned in consequence of the constitutional changes for officers who may not wish to serve under the Federal Government of the future. I feel confident that, as a result of this expert enquiry, the burden of pensionary charges of the Federal Government will be considerably lightened. The Provinces will, of course, contribute their share towards the payment of these charges in the same manner as in the case of purely British Indian debts.

As to the remaining heads of expenditure agreed to be federalized, there may still be, I venture to submit, considerable scope for economy, without impairing the efficiency of the service, which can be effected by controlling expenditure more strictly. In this connection I would like to emphasize that, having regard to the present financial position of India, the need for drastic cuts is clearly indicated, and the framing of the Federal Expenditure Budget must proceed on this basis. As it is, even since the Memorandum of the Finance Department was prepared, proposals have been made by the Government of India whereby considerable economies are being effected under the various heads of expenditure, the liability in respect of which will, in future, be Federal. We are happy to endorse the suggestion of the Committee:—

> "that all the governments should exercise the strictest economy and that their scale of expenditure should be reviewed and reduced to a minimum."

It is to be clearly understood, however, that such a review would be made by the governments of the federating Units themselves, and not by the Federal Government.

We agree that the deficits of Chief Commissioners' Provinces should be a Federal charge, and that the North-West Frontier Province, when it is made into a Governor's Province, should receive a subvention from the Federal Budget, to provide for the difference between revenue and expenditure. If the Income-tax is made a Provincial source of revenue, the budgetary deficit of these Provinces and areas will decrease by at least about one crore, and with the better development and utilization of all the available resources, as, for example, forest resources of the Andamans, the gap between the revenues and expenditure would further be abridged.

Now, my Lord, turning to the revenue side of the problem, the first proposition I should like to put forward on behalf of the States is that the Federal revenue should be strictly confined to the specific cases agreed upon to be federalised, and that is by "indirect"

expressed by the sub-Committee that such contributions should be wiped out *pari passu* with the Provincial Contributions. The States' contributions cannot be treated on the same footing as Contributions made by the Provinces, if only because the States have shouldered their burden for over a century, whereas the burdens borne by the Provinces are comparatively quite recent. It must not be forgotten that, however the nomenclature might have been recently altered on account of the protest of the States, the contributions, if maintained, will continue to have, as the Government of India Memorandum itself admits, an air of feudal relationship—a relationship which does not in fact exist besides being wholly inconsistent with the idea of Federation. The States therefore ask that the cash contributions should be abolished forthwith. This applies equally to payments made through the medium of ceded territories.

The States are prepared to agree to the proposals of the sub-Committee regarding the borrowing powers of the Units, and the security for post-Federation debts. They are also in favour of the formation of a Federal Loan Board on the lines suggested by the sub-Committee, subject of course to the condition that it will be left to the option of the States to join it or not. This Loan Council may also serve to liquidate that portion of the liability in regard to the pre-Federation debt of India, which, as I have indicated, is not chargeable to the Federal Government as a whole, and which accordingly will remain as a British Indian concern until the liability is finally extinguished.

The States are in full sympathy with the proposal to entrust a detailed examination of the financial proposals to a body of experts. They would prefer to have a representative Committee as proposed by Sir Tej Sapru; but, if that is not accepted, we may be allowed to point out that the States as federating Units are intimately concerned with the problems proposed to be entrusted to the two Committees, and if experts from British India and other experts appointed by His Majesty's Government are to sit on these Committees, it is hoped that experts from the States will also find seats, on both the Committees.

Before I finish, I would like to add that the States fully realise that "changing industrial and economic conditions may, at a date earlier than might now be anticipated, make it imperative to modify the financial scheme adopted at the outset." But, if it is considered necessary that amendment of the constitution in this respect should not be so hedged in with difficulties as to make any change almost impossible, it is equally necessary to lay down in the constitution that no altered financial scheme shall involve any fresh financial burdens on the federating Units without their free consent.

I apologise for having taken so much of your time, and I am grateful to you, Lord Chancellor, for having permitted me frankly to place our point of view before the Committee.

Sir Maneckjee Dadabhoy: May I ask a question of His Highness? Your Highness has given us a full expression of your views,

Federation. It seems to me that, neither on grounds of justice nor logic, can it be maintained that the Report is right in taking the probability of the Federal deficit at the outset as a reason for not recommending immediate abolition. Equity has been long delayed; but is it to be further delayed for years because it is expected that the money will be needed? Compared with what must be the large total of Federal revenue, the amount involved is small; and surely it ought not to be beyond the skill of the Expert Committee, which it is proposed to set up, to suggest other ways of obtaining the amount rather than that of continuing an admitted injustice and anachronism. A State which like Mysore, bears so disproportionate a part of the burden, will have some relief by the proposal of the sub-Committee that there should be an immediate remission of that part of the tribute which is in excess of 5 per cent. of the total revenues of the State. Incidentally I would point out that this concession goes some way at least to break down the argument that the continuance of the tribute is a financial necessity. What we ask for is not such partial relief, but the removal of an invidious and illogical differentiation between the States which pay tribute and the far larger number which make no such payment.

On these grounds, My Lord, I appeal to the Committee to look at the matter from a broad and statesmanlike standpoint and to enable Mysore, and indeed all the States concerned, to enter the Federation on terms of honourable equality with other Units.

Sir Tej Bahadur Sapru: I want to know what Sir Mirza Ismail's suggestion is—whether he wants the abolition of this contribution as recommended by the sub-Committee—the 5 per cent. or something like that—immediately, or whether he suggests that something else should be done having regard to the present financial position of the country—something less than 5 per cent.

Sir Muhammad Shafi: Say 3 per cent.

Sir Tej Bahadur Sapru: Or whatever it may be.

Sir Mirza Ismail: I am pleading for its total abolition on grounds of justice.

Sir Tej Bahadur Sapru: But you will be satisfied with something less?

Lord Peel: We are offering him something less, Sir Tej.

(The Committee adjourned at 1 p.m. and resumed at 2-20 p.m.)

H.H. The Maharaja of Bikaner: My Lord Chancellor, I did not intend to participate in this debate, but in the light of the discussions which have taken place to-day and yesterday—when I am sorry to say I was not present—perhaps I may be permitted to invite attention to one or two matters which, I hope, may help to elucidate certain points on which there is a certain amount of misgiving.

Like His Highness the Chancellor, I do not lay claim to be a financial expert, or anything of the sort; but I do entirely subscribe to, and share, the views expressed by His Highness of Bhopal when

he said that the States have co-operated, and are desirous of co-operating, in a spirit of genuine sympathy in regard to federation. May I be permitted to add that my faith in federation still remains unshaken as being the best solution and ideal for India, British India and the States; and, as I have repeatedly said—" Federation with honour and safety to the States " is a motto to which personally I also very strongly subscribe.

Before proceeding further, may I say that, although I was absent yesterday—with your permission and that of His Highness the Chancellor—I took the opportunity of going through the proceedings last night and of reading the views which Sir Akbar Hydari has put forward on behalf of our States Delegation. I wish to state that there is really no change in the position of the States as regards their willingness to enter Federation with reasonable safeguards. I also wish to assure you all—every one in this Committee—that we of the States Delegation are not shifting our ground or demanding impossible terms as regards the States consent as to the conditions precedent to their entering the Federation. I was very glad, after our Finance sub-Committee met the other day, to hear from a British Indian friend exprssions of his gratification at the attitude of the States in that Finance sub-Committee; and I told him that, so far as the States were concerned, I was sure he would find us all along reasonable, as I was sure we would find our British Indian friends reasonable.

Now, about the point that has been raised by Sir Akbar Hydari, I think there has been, as he himself has said to-day, a certain amount of genuine misunderstanding which it would do no harm to clear up by further reiterating a point or two. The proposed Expert Committee is really intended to deal with two—I will not say separate, but two—specific kinds of cases or matters. The one is that which deals with and settles the principles, and the essential conditions, so far as Federal finance and matters relating thereto are concerned. The other is what has been stated as regards the claims for purposes of adjustment and relief to certain States, such as ceded areas, and so on. I think, Sir, that we have to clear our minds on these two points a little more. I am quite sure that Sir Akbar Hydari would be the last to suggest—he miself has said that he does not want things to go on till the Greek Kalends—but I think a moment's consideration will show that, as far as the broad principles and essential details and safeguards relating to federation are concerned, it is absolutely natural and clear that, before any State goes in for federation it must know the essential conditions and details, as well as its obligations and liabilities—call it what you like—as regards Federal finance; and that is a point on which I do not think there is any disagreement—certainly not on this side. And I do not think, really, that there would be, after a moment's consideration, any difference of opinion on the other side —because the States' expression of their willingness to enter, or to consider entering into, federation, was obviously subject to certain safeguards.

Before I proceed further, may I here, in this connection, ask to be permitted to quote from a speech which I made on the 8th January last in this Committee; page 561. I first of all invited attention to the fact that, early in the proceedings of this Committee, I raised the question of appointing a Financial sub-Committee. I did not press the point, on Sir Bhupendra Nath Mitra's pointing out that such an enquiry would take a very long time and that we should have to prolong our stay here indefinitely. But I also said that:—

> "If we have not raised this point again during our deliberations, the States have nevertheless certain very definite grievances and questions to raise as regards the manner in which they have been affected in the past."

His Highness of Bhopal, our Chancellor, has himself to-day pointed out the change of attitude of the States as regards certain financial matters as the outcome of our discussing this question of Federation. In that connection I went on, in my speech on the 8th January, to use the following words:—

> "Federation has undoubtedly changed the position somewhat, and the States will have to consider finally whether and what claims they are to put forward, or what other proposals for an equitable adjustment and satisfaction of the rights of the States in regard to the various issues they have raised, such as those relating to Sea Customs, Railways, Currency and Coinage, Posts and Telegraphs, double Income-tax, and so on."

I hope that we shall be credited with having approached this matter, not only with sympathy, but with generosity. Perhaps, in the same connection, I may read out the next paragraph of that same speech:—

> "Perhaps these matters will have to be gone into very fully and very impartially, and the terms of reference for such an enquiry will have to be drawn up in consultation with the States. Before final details and Treaties and agreements regarding Federation can be entered into by the States, I think when other details are being worked out a Committee will have to be appointed to examine these matters, consisting of representatives of the Crown, of the States and of British India, and of experts. In this connection the question of the contributions of the States and other matters, both direct and indirect, such as ceded areas, will also have to be considered."

Then I went on to invite attention to the remarks of Sir Mirza Ismail regarding tributes and certain other matters. So I submit that there is really neither any change as regards the attitude of the States nor is there any lukewarmness on our part.

But may I invite attention to a further point. The position of the States Delegation will be appreciated when I say that it has

already been stated that the Princes and Ministers last year did not understand the implications of federation when they took a plunge into the dark. I submit that we did not take a plunge in the dark. We did understand the implications of federation, and we spoke with our eyes very clearly open. There have been other objections. It has been said that we did not understand the implications of federation. But in regard to financial matters, though some principles have undoubtedly been worked out and brought out very clearly in this sub-Committee, the time, as Lord Peel said yesterday, has really been very short for a thorough examination of all these questions. To make it clear that no one is not understanding the implications of federation, it will be obvious that, as each State has to enter individually into federation, and as each State cannot be forced to come in and must know what the completed picture is, an essential part of that picture will also be Federal finance. It is on that ground that Sir Akbar Hydari pointed out that we should have to deal with the situation. I am not going into the question—about which I do not understand very much—of plus and minus; but there are certain parts of the matter which may take some time. What I do submit is that, before the States are in a position—before the picture is complete, let us say—for them to judge entering the Federation, it will really be necessary to see the broad principles finally settled; and I believe that, in the sub-Committee, it was said that the Expert Committee would have the power of reviewing things on such later information, as Sir Akbar Hydari has brought out to-day. Therefore, together with the question of the Chamber of Princes having a voice in the matter, and together with the Treaties with the Crown, we will have to know what are the principles of Federal finance.

I submit that it should not take long. There is no question of the Greek Kalends, or anything like that. You will have to have certain enquiries, even in British India, with regard to franchise questions and so on, and they are sure to take a short time—it may be a year or it may be less. If, as we hope, things are settled satisfactorily here so far as the States are concerned, I do not see why, immediately after the Round Table Conference comes to an end here, some such Expert Committee should not be appointed. Personally, I am inclined to think the Committee will have to be appointed in India, because we have not all the material here and it will take a good deal of patient work to prepare it. I think you will have to have a Committee like this, and that is the time when we will finally settle the principles. The minor details could be worked out later. I hope it is understood that we are not going back on anything. To carry things with the States, however, some such investigation will be necessary.

I am not a believer always in the principle of *festina lente*, but I do think sometimes the longest way round is the shortest way home; and, if we are going to get the support of a large number of States, these broad principles should be the subject of investigation, and an enquiry with regard to Federal finance should be undertaken

as quickly as possible, so that the States may have the misgivings, which I know exist in their minds, removed. I am confident it will therefore lead to a larger number of States agreeing to enter Federation, which is what I myself desire and what we all desire.

Mr. Gandhi: My Lord Chancellor and friends, I have to tender my apology for intervening in this debate. It was my intention to request you to give me a few minutes at the end of this discussion for making a few brief remarks, but, as I listened to the discussion yesterday, I thought I might be able to make a suggestion which might remove the difficulty with which this Committee had to contend. I became more convinced than ever of this when Mr. Jinnah presented his difficulty, and therefore it was that I requested you, Lord Chancellor, with apologies to Dr. Shafa'at Ahmad, to let me intervene and make a few remarks. I want to do so with a view to saving time if possible.

Before I proceed with my suggestion, I should like to tender my congratulations to Lord Peel's sub-Committee upon their labours and upon the exhaustive Report they have given to us. I feel, however, that the sub-Committee aimed too high, and hence, quite unconsciously, threw an apple of discord in our midst. The reference is clearly to examine and report upon the general principles upon which the financial resources and obligations of India should be apportioned between the Federation, etc. Well, in my humble opinion, if the sub-Committee had not aimed too high it could have presented us with a definite scheme. I sympathise with Mr. Jinnah's objection; but at the root of his objection is, I believe, a misunderstanding of Sir Tej Bahadur Sapru's presentation of his case—that is to say, if I have understood him correctly. Mr. Jinnah's objection is that, unless there was some sort of a scheme, there could be no Federation whatsoever. I think that that would be a fatal objection if it was true. If I have understood Sir Tej Sapru's contention correctly, it is that there should be a scheme, but that there might be, or should be, an Expert Committee to be brought into being by the Federal Government, if it ever comes into being, which could examine the whole question *de novo*, and present that Government with an exhaustive report. Naturally that report could be shelved, could be torn to pieces, examined by all the parties, and if it commended itself to them it could be then adopted by the Federal Government. There was no question of embodying that report in any constitution. The Constitution would have been framed before the Federal Government came into being. I personally confess that I do not envisage a constitution, to be framed by the greatest Parliament of the world, that would make us risk-proof and difficulties-proof. I believe that this Federal Government, if it comes into being, would be faced even in the very beginning with many difficulties with which it would have manfully to struggle; but I feel that it is not beyond the powers of this sub-Committee to give us an elementary scheme about which all parties are agreed. I do not mind how humble that scheme is, but it should be a scheme which would commend itself to the States. Let the States them-

selves decide, in consultation with the other members of this Conference, as to how far they are willing to go.

Let me illustrate what I am saying. Here, as they have started with a mention of the natural difficulties that they have to contend against, the whole of this Report is a tentative Report and for its finality it depends upon these two Expert Committees which have been suggested by the sub-Committee. What I feel is that, just as they have said in paragraph 10 that so many heads are marked "Federal," if they could sit again, and if this Report was referred back to them, they would then come, not with a tentative suggestion, but with an agreed suggestion that so many items of revenue would be Federal. Even if there was an Expert Committee appointed we would certainly not get absolutely accurate figures. Absolutely accurate figures can only be had after the event has happened—after the revenues have been collected—but we should have something to go by. I venture to suggest that such a thing is not necessary for our purpose before we can come to an agreement as to what items shall be or shall not be considered to be Federal; and so I simply take up these items and I say, let them concentrate upon these items to the exclusion of everything else and say definitely, "Yes, External Customs, including Export duties, shall be Federal" or "shall not be Federal." Then they would know immediately what are the sources of revenue. Similarly, let them sit together and say, "These will be the obligations that shall be Federal," and let the States decide for themselves After all, it is they who are invited to come, or who have volunteered to come. I welcome gratefully the assurance given by His Highness of Bhopal, as also by His Highness of Bikaner. My sympathies are entirely with Sir Akbar Hydari when he says that he cannot possibly, either on behalf of Hyderabad or on behalf of the States Delegation, take a leap in the dark. Let there, therefore, be no leap in the dark; and, in order to avoid such a catastrophe, let there be just now a very humble scheme of participation, and let us launch that humble scheme. Then it would be open to the Federal Government—and there should be sufficient elasticity, for which His Highness of Bhopal pleaded, in the constitution itself to enable the Federal Government and the Federal Parliament—to take on what burdens they chose to take on. We do not want a cast-iron constitution, out of which we can never get, or to which we may never make any addition or amendment. If we have an elastic constitution, then it will be open to the Federal Government, as it gains experience, to appoint, not one Expert Committee, but ten Expert Committees to examine many things; and then the Federal Government, as it begins its march, will shoulder further responsibilities, and as it proceeds to shoulder responsibilities it will also have further avenues of revenue to be derived from various sources. If once the thing is launched, I anticipate no difficulty and no trouble of any kind whatsoever.

Therefore my concrete suggestion, if it commends itself to you, is that we refer this Report back to the sub-Committee with thanks.

and ask the sub-Committee, with the material at its disposal, to give us a minimum scheme to which the States agree; and that we accept that scheme as a scheme to start with, without any encumbrance in the shape of Expert Committees. If we do that, we meet entirely Mr. Jinnah's objection, I think. We meet also the legitimate fears of Sir Akbar Hydari; and, what is more to the point for a man like me, we waste no more time even on a matter which is of importance. I must confess to you that I dread a committee which might report in twelve months' time or even in three months' time or even in one month's time or three weeks' time. I think that this Conference has been called upon to shoulder a particular burden. It should manfully shoulder that burden and not throw responsibilities upon any further committees. Whatever we can hammer into shape we should present to His Majesty's Government, to the Parliament, and to the people of India also; but I think that, unless we approach the task in this manner, so far as I can see, we shall certainly never see light out of what appears to me to be impenetrable darkness at the present moment.

That really is the reason why I have intervened. I think that I have sufficiently explained the suggestion that I have ventured to place before this Committee.

Dr. Shafa'at Ahmad Khan : I should like to thank Mahatma Gandhi for his very lucid and clear speech on the Federal Finance sub-Committee. It is difficult for me to make any remark regarding the proposal he has just made, and I think that the members of the States Delegation should first express their views. So far as I am concerned, I think Lord Peel will agree with me when I say that we explored all the fields with the greatest care. What we felt, My Lord, was that we had no sufficient material before us. We had also the question of overhauling the existing resources for the Provinces and for the Centre. I should be prepared to consider the proposal after I hear what the States Delegation say and what the leading members on this side also say.

While I was following the discussion yesterday, I felt that there was a danger of the idea of Federation disappearing from our view altogether. There were moments when the greater scheme which the Committee had propounded and discussed seemed to be disappearing in a cloud of mist. But to-day the position has been greatly improved. I feel confident that, after the speeches of the Chancellor of the Chamber of Princes, of His Highness of Bikaner, of Sir Akbar Hydari, and, lastly, of Mahatma Gandhi, the idea of Federation will be successful, and that we shall be able to evolve a scheme which will be satisfactory to the Princes and to the interests of British India.

As a member of the Federal Finance sub-Committee, I must place on record our deep debt of gratitude to our Chairman, Lord Peel, for the tact, the patience, and the skill with which he presided over our deliberations. Only those who have had the privilege of working with him on that sub-Committee can know with what great ability he piloted those contentious and controversial measures

through. When we sat round the table and discussed various controversial points with our brethren from the Indian States, we did so in a spirit of compromise, of sweet reasonableness and of give and take. We did not act as ambassadors from rival and hostile powers; we felt that we were dealing with a very difficult and complex problem which will affect millions for generations, and we therefore acted in the spirit of brothers, the elder brother from British India meeting the younger brother from the Indian States.

Therefore, though there may be—and I think there are—some paragraphs to which objection may be taken either on the one side or the other, I submit, Lord Chancellor, that the Report must be taken as a whole and treated as a whole, and that you cannot pick out a passage here or a passage there and say "This is bad, this is unworkable," and so on. If you treat it as a whole, you will find that the main problems with which Federal India will be faced have been settled in an eminently practical manner—in a manner which will be really satisfactory to both sides, to the Princes' side and the British Indian side.

The Report of the sub-Committee is consequently essentially the result of a compromise, a compromise on the side of British India and a compromise on the side of the Indian States; and here I should like to place on record the great reasonableness and the spirit of give-and-take which the representatives from the Indian States displayed in the sub-Committee. After hearing the speeches to-day, I am convinced that the Federation is not in danger. I am no less convinced that the financial scheme which we have sketched in our Report is substantially the foundation of our future Federation.

I will now, with your permission, Lord Chancellor, deal with the two points which have been raised yesterday and to-day. The first point to which I wish to refer is the point which my esteemed friend, Sir Tej Bahadur Sapru, dealt with to-day and referred to yesterday. He mentioned the lack of any provision in the Report of the sub-Committee for what he called the interim period, and he pointed out that the sub-Committee has made no provision for an interim period; and he then referred to the relevant section of the South African Constitution. In my humble opinion, there is no need for what is called an interim period. An interim period has not been provided for in every constitution. There are constitutions where no interim period, in the sense in which that term was employed by Sir Tej Bahadur Sapru, has been provided. Take the Government of India Act of 1919. That Act was passed in 1919, but the important sections of it were not brought into force until a number of rules had been framed regarding the composition of the Legislature, the franchise, financial relations and so on. The mere fact that an Act is passed ought not to mean that it must be brought into immediate operation. As a matter of fact, in the Australian Constitution, there is a section which lays down that the Constitution will be brought into force a year after: and during that year apparently it contemplated the completion of arrangements for the

transfer of power from the old government to the new government. There are other constitutions where an interval is provided for the transfer of power from one government to the new. Consequently, it is not necessary, I submit, that an interim period should invariably be provided for in any constitution that we may frame here. Could we not go on, as we have gone on for years, with the present constitution of the Government of India until our arrangements for the new one are complete? If we have been able to carry on for a number of years, surely we can carry on for another year or two; and during this interval we could appoint an Expert Committee, and that Expert Committee could complete its enquiry within, I hope, a comparatively short time, and the results of the enquiry could be embodied in the Constitution itself. So, My Lord, an interim period is not absolutely essential.

Another point was raised by my friend. He said that the Federation should be started immediately, and an Expert Committee should be appointed by the Federation. I am very sorry to say I do not agree with this view. I believe that it is impossible to have Federation until and unless we know beforehand the Units which are willing to come into the Federation; and the Units will not express their readiness to come into the Federation until they know what their financial position is going to be in the new Federation. Therefore, I if may say so with very great respect to Sir Tej, we are placing the cart before the horse.

Sir Tej Bahadur Sapru : May I ask you whether, in what you said yesterday, you were placing the cart before the horse? Were you placing the cart before the horse when you put this question in the course of the discussion?—

> "*Sir Maneckjee Dadabhoy :* Unless Sir Akbar Hydari has changed his mind, my impression is that Colonel Haksar agreed to the suggestion that we should go into the Federation at once, and an enquiry was to be started afterwards.
>
> *Sir Akbar Hydari :* No, I do not think that is so.
>
> *Sir Shafa'at Ahmad Khan :* I put that question myself, My Lord."

Sir Maneckjee Dadabhoy : My Lord, as this refers to me, will you allow me to reply?

Sir Tej Bahadur Sapru : I do not impute any inconsistency to you, Sir Maneckjee.

Sir Maneckjee Dadabhoy : I did put that question, yesterday, and I must confess that I was under a misapprehension. I confused two items of importance. I felt, after that, that I had done Sir Akbar Hydari some injustice in the matter by putting him that question. I confess that my misunderstanding was owing to the fact that there were other questions, like cession of territory, for which compensation was to be fixed. There was the question of tributes to be taken into consideration. There were other local matters affecting the States to be taken into consideration; and we

had come to a conclusion in respect of those matters that they could be properly deferred as they would take years probably, to decide. But, as regards the stage at which the Federation should come into existence, I am now to-day, after hearing the Princes and the States, entirely in agreement with Dr. Shafa'at, and I say it would be impossible to expect the Princes to give their adhesion or consent, in all fairness and justice, at this stage, as to whether they should come immediately into Federation or not.

Sir Muhammad Shafi : We are not here to score debating points. We are here to discuss important problems on their merits. The question is, can any Unit of this proposed Federation agree to come into the Federation without first knowing what its financial obligations will be?

Sir Maneckjee Dadabhoy : That position was made perfectly clear this morning by His Highness The Maharaja of Bikaner. He distinctly stated " We must know our liabilities and our obligations."

Chairman : I think you are quite right, Sir Maneckjee. I think what happened was that there was a misunderstanding yesterday afternoon. I confess that I did not follow it at first; I was confused with two Committees.

Sir Maneckjee Dadabhoy: And I am responsible for that mistake, Sir. I am sorry.

Dr. Shafa'at Ahmad Khan : I would only say this much as regards the question that has been put, that I merely asked Colonel Haksar that question in the Finance sub-Committee to be clear on a crucial point. If I put a question, of course, it does not mean that I agree with the policy implied in the question. I merely asked if the Indian States will come into the Federation before or after the Expert Committee. That is all, nothing more; so that the question which has just been put by Sir Tej Bahadur Sapru is, I submit, irrelevant to the issue before us.

My Lord Chancellor, I was dealing with the question of federation on the basis propounded by Sir Tej Bahadur Sapru. I submit that, if his proposal is carried into effect, there will not be a federation in the true sense of the term. For what does federation imply? It implies the aggregation of constituent elements. The constituent elements must be there before they can combine into a federation; and how can you have any constituent elements if the latter do not know what their fate is going to be in the new constitution? They cannot come in until they know what it will be. Until they know the financial liabilities—the credit and debit side of the account—they will not enter; and if they do not enter, where is the federation? I submit that the States must know their position financially before they come into the federation, and I think that is a proposition that has been accepted and carried out in constitutions practically all over the world. Sir Tej Bahadur Sapru referred to Australia. The independent, Sovereign States of Australia carried on negotiations on this same financial question for nearly thirty

immediately after this Conference has finished its work, and it would be an instruction to that Committee to complete its task, say, within six months. Only those questions or problems would be referred to it which are capable of immediate solution. Other problems, such as those relating to the Maritime States and so on, which might take a long time, could be entrusted to another committee later on.

Then the other point which was raised by Sir Tej Bahadur Sapru was with regard to the body which will appoint this Committee. For the reasons given by me in my speech, I believe the proper body will be the Crown. The Crown should appoint the Committee after this Conference is over. After the Report of the Committee has been published, it should be circulated to the Indian States, and after agreement has been arrived at on the important issues raised——

Mr. Iyengar : How is the agreement to be arrived at?

Dr. Shafa'at Ahmad Khan : We can meet in India. That is certainly possible.

Mr. Jayakar : What about the Treaty rights of the Crown? Where would agreement be arrived at with regard to that, in England or in India? You referred to some Treaty rights: will agreement with regard to them be arrived at in India?

Dr. Shafa'at Ahmad Khan : Is it necessary, if certain portions of Treaty rights are to be surrendered, that it should all be done in London?

Mr. Jayakar : That is what I am asking you.

Sir Muhammad Shafi : Cannot the Secretary of State for India go out to India, instead of a hundred people coming here?

Dr. Shafa'at Ahmad Khan : I am simply pointing out that this could be done in India; it is not absolutely essential that every Prince should come here in order to surrender Treaty rights.

Sir Tej Bahadur Sapru : May I know—I expect Lord Peel can tell us—whether the question of Treaty rights and their surrender was gone into at all by the sub-Committee?

Lord Peel : We did not go into that particular problem.

Sir Tej Bahadur Sapru : It has been referred to by the learned speaker, but I gather it was not considered by the sub-Committee, nor was it raised by any one of the representatives of the Indian States.

Lord Peel : I think it was hardly within our competence, Sir Tej. I think, if it had been raised, I might possibly have had to say that it was outside our range.

Sir Maneckjee Dadabhoy : But even now, how are these questions about these Treaties settled?

Mr. Iyengar : That is a general issue.

Expert Committee that is to be appointed, I am unable to give my concurrence to it.

Coming now to the actual division of resources proposed by the sub-Committee in paragraph 10, of course, the only test that would be applied to this allocation is the test of adequacy. Is the allocation made in paragraph 10 such as to give both to the Central Government and to the Units the necessary adequacy of revenue? Now, it is not possible to examine the scheme by that test, because—without meaning any offence to the sub-Committee—the Report is absolutely bare of the necessary Budget Estimates that one would have to have before oneself in order to say whether the allocation is adequate or not. The division seems to have been based on the assumption that the welfare functions are largely Provincial, and that therefore the Provinces must get expanding sources of revenue. That, of course, is true in the main; but, in so providing, it seems to me they have denied to the Federal Government both adequacy and elasticity in its fiscal system.

Take the revenue side of the proposals as contained in paragraph 10 of the Report of the sub-Committee. You have first of all Customs as a source of revenue. Now, there are various factors on which the Customs revenue would be dependent. First of all, it would be dependent upon trade prosperity or trade depression. In times of depression it is obvious that exports would be reduced, and also the consuming power of the people, and to that extent imports would also be reduced; and that would mean a direct reduction in the Customs revenue. Secondly, this source of revenue is largely dependent upon the particular kind of tariff policy that will be pursued in times to come. It may be that there may come into power in India a party which may believe in absolute protection, creating a dead wall against any imports of any sort from outside that are likely to compete with industry and products at home. If that happens—if imports are shut out by a policy of extreme protectionism—that would cut at the root of the Customs revenue. If, on the other hand, there comes a party in power which believes in free trade and no protection, that again will make the Customs revenue a very bare and slender source for the Federal Government to depend on.

And now, let us take the second source of revenue for the Federal Government—Opium. According to the Government of India's Despatch, page 54, I find the Government of India say that we shall lose all our revenue on Opium exports, which amounts to about 2 crores, but shall still retain a small sum of 10 or 15 lakhs from the sale of medical Opium. That shows how meagre is this source of revenue for the Federal Government.

The third source of revenue which has been assigned to the Federal Government by the sub-Committee is the Salt tax. Now, as we all know, this source has been a matter of contention and has been dragged into the vortex of Indian politics; and, if the Congress Party had its way, this tax would vanish altogether. Now, apart from the question of whether the Congress would succeed in

removing the tax altogether, it is absolutely certain that this tax, which is so intimately bound up with the standard of living of the ordinary masses of the people in India, can never be depended on to give a very large source of revenue to the Federal Government.

Lastly, you have the Corporation tax, which is suggested by the sub-Committee as a source of revenue for the Federal Government. I am informed that its yield is somewhere about 3 crores, so that obviously it is at the present moment a source of very small dimensions. It seems to me that, if we agree that industrialisation is a very important thing for the prosperity of India, and if we further agree that, for industrialisation, the incorporation of capital is also necessary, then I am afraid that we cannot increase this tax to any very large extent, for fear of penalising incorporation.

This is what I feel regarding the revenue side of the Budget. Coming to the expenditure side, the sub-Committee has proceeded upon the view that the Government at the Centre will have very little to do except to defend. I do not agree that that can be the view of the function of any government in modern times. There was a time in history when people thought that the proper function of a government was to provide for nothing but anarchy plus the constable; but I think we have changed. We believe that the government must provide the constable, but it must also provide welfare. It seems to me—this is my personal view, the view of other members may be different—that the Government at the Centre, for some time at any rate, will have to take upon itself certain welfare functions which to my mind are peculiar to India. I think, and I am going to propose elsewhere, that the Government at the Centre should take upon itself the burden of securing and helping, to some extent at any rate, the welfare of what we call the Depressed Classes. I want that the problem of the Depressed Classes, and the problem of removing Untouchability, should not hereafter be looked upon as a purely local or Provincial problem. I want that it should be looked upon as a national problem in which the whole of India is interested. I want the Government at the Centre to take upon itself the duty of bringing the jungle tribes, which number probably as many as the Depressed Classes themselves, within the pale of civilisation. I want that Government to take upon itself certain functions in respect of what are called the "backward tracts." In other words, my submission is that the Government at the Centre should take at least such welfare functions upon itself as will guarantee what I call the minimum of civilised life to every individual and to every community.

Then, again, there may be such afflictions as may affect the whole of India, or as may affect a particular Province and which yet may not be within the competence of that particular Province to deal with. Take, for instance, the curse of malaria. In some Provinces, it is a small malady. In some Provinces, I am told that it is eating into the vitals of the people. The Province may not be sufficiently strong, economically or financially speaking, to

eradicate it. It may have to be treated as a national problem, and to that extent the national government will have to take a welfare function upon itself.

Again, the sub-Committee does not seem to have taken into account the fact that, for certain peculiar reasons, apart from reasons which would be common to all the Provinces, the Federal Government may have to give certain subventions, for instance, subventions to the North West Frontier Province, for the peculiar burdens it may have to bear by reason of its special connection with Imperial problems. Similarly, new Provinces may come into being, and, in order that they may be sustained, the Federal *Government may have to give them subventions.*

Now, it seems to me that, if you take a broad view of the expenditure side, as I have tried to explain, and compare it with the revenue side as is proposed in this sub-Committee's Report, it *would not be at all an exaggeration if I said that the fiscal system* which is adumbrated for the purposes of the Federal Government will be such as will enable it to keep its nose just above the water in ordinary times; and even that may not be so. What is absolutely certain is that, with any gust of adverse wind, it will sink.

Now, take the provisions suggested by the sub-Committee in paragraph 21 regarding emergency—I ought to say grave emergency. Now, the recommendation made by the sub-Committee is that the Federal Government should have power to call for contributions from all the Units of the Federation. The question that arises in my mind is, is this a safe and a sure method? Is this a method which would be a dependable method in all circumstances? As regards the willingness of the Provinces to pay contributions in a grave emergency to the Federal Government, a view was expressed yesterday by an esteemed colleague. He said that, if the Provinces were *to help the Federal Government in a grave emergency* with contributions, then the Provinces should have the discretion in determining whether an emergency has arisen or not. Now, I do not think that that is a view that will be accepted by all; but that view is surely indicative of one thing—namely, that the Provinces will not be willing co-operators in meeting the deficit of the Federal Government in an emergency that may arise. Could the States be depended upon to meet their share of the contribution in an emergency? I have raised that question, but I do not know that I should give *the answer. In any case it seems to* me that it is not a dependable method. As to the solvency of the *Provinces, we can be more or less certain.* About the solvency of the States in an emergency, for emergency purposes, I, for one, could not be certain of that. Therefore, My Lord Chancellor, my conclusion is that, for the purposes of adequacy, for purposes of elasticity and emergency, the best course would be to widen and broaden the basis of the financial system of the Federal Government. Therefore, my proposal would be that the Income-tax should be treated as a common source of revenue both for the Federal Government and for the Provincial Governments, so that

each Government will have the inherent right and authority to tap that source, whenever there is any necessity for it, without having to depend upon such contributions as are contemplated in paragraph 21.

Now, while I am dealing with this, I should like also to make certain observations as to the method of sharing this Income-tax. Before I do so, let me enunciate two propositions. The first is that, in any allocation that we may ultimately agree upon between the Federal Government and the Units—I am speaking particularly of the Provinces of British India—we should so contrive matters that the Provincial finance shall be a self-contained system not dependent upon doles or upon contributions. Secondly, I should so contrive the Provincial system of finance that it would not be destructive of that sense of responsibility which every Executive must feel towards its Legislature.

Chairman : Do I rightly interpret your remarks, that it would be most important to get all the Provincial matters into order as soon as possible? I quite agree with your laying down a canon with regard to Provincial finance, and I gather you mean that all these Provincial questions should be settled as soon as possible.

Dr. Ambedkar : They should be. My submission, following these two proposition, is that I would not approve of such a division of the Income-tax as would permit the Federal Government to fix the rate of taxation and to divide the yield between the Provinces and itself. I would allocate the basis of taxation, one base to the Federal Government, and another to the Provincial Government. I want the system recommended by the Taxation Enquiry Committee introduced so far as the division of the Income-tax is concerned. I should allocate " personal income " to the Provinces, and the rest of it to the Federal Government, and the rate on " personal income " should be fixed by each Province, and not by the Federal Government, according to its own necessity.

(*The Committee adjourned at 4-10 p.m.*).

PROCEEDINGS OF THE THIRTY-FIFTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON THE 15TH OCTOBER 1931, AT 11 A.M.

HEAD 4.

Distribution of Financial Resources between the Federation and its Units.

DISCUSSION ON THE REPORT OF THE FEDERAL FINANCE SUB-COMMITTEE—(*continued*).

Dr. Ambedkar: My Lord Chancellor, yesterday I pointed out that the fiscal system devised by the sub-Committee for the Federal Government appeared to me to be inadequate and inelastic, that it

was not equal to the strain which was likely to be put upon it by reason of any emergency, and that it was necessary therefore to alter the allocation of the revenues proposed by the sub-Committee by making the Income-tax a common source of revenue for both. I also said that, in devising a scheme of allocation of resources, two propositions ought to be kept in mind. One was that the system *of finance, whether Federal or Provincial, should be autonomous* and self-sufficing; and, secondly, that it must not impair the sense of responsibility which the Executive must bear towards the Legislature. *It will be obvious that those subventions or contributions* are inconsistent with an autonomous and self-contained system of finance. They are bound to impair the sense of responsibility in *the Executive towards* the Legislature, and they are likely to make the Legislature indifferent to the Executive. Power to refuse supplies, and power to refuse appropriation of supplies already secured from outside, are not equally efficacious methods of controlling the Executive and bringing it into conformity with the wishes of the Legislature. From this point of view, the problem of dividing sources of revenue becomes of immense importance. You may divide them in such a manner that the division will make each authority autonomous and self-sufficient, or you may divide them in such a manner that the fiscal system resulting therefrom would not be autonomous and could not be self-sufficient without adjustment by means of subventions and contributions.

In suggesting the particular method of dealing with the Income-tax as a joint head of revenue I have been guided largely by these considerations. There are two conceivable ways of dealing with the *Income-tax as a joint source of revenue. First, you may adopt* the method of what is called segregation of the source and division of the yield; and, secondly, you may adopt the method of apportionment or partition of the source and division of the yield. Under the first method, the fixing of the rate will be within the exclusive jurisdiction of one of the two authorities, and naturally of the Federal Government. The Provincial Authority will only be a sleeping partner entitled to receive a share in the total yield of the tax. Under the second, both will have equal jurisdiction to fix their respective rates of Income-tax. A Province will fix its own Income-tax rate, to be operative within the Province; the Federation will fix an Income-tax rate, *to be operative throughout* the Units of the Federation. On the basis that the administration and the collection of the Income-tax shall continue to be a Federal subject of administration, my view is *that the second method ought* to be adopted as the means of allocating the revenue. This would not be very different from the system which prevails in France, Belgium and various other *European countries, and is known as the* system of the *centimes additionels* applied as between the provincial and the local authority. Under this scheme there will be two Income-tax rates: *(1) a Federal rate, fixed by the Federal Government* from time to time according to its needs; (2) a Provincial rate, fixed by the Provincial Governments from time to time according

to the financial requirements of each. The tax as a whole will continue, as now, to be administered and collected by the Federal Government.

The advantages of this plan are obvious. First, it will do away with the system of doles and contributions and will help to make the financial system of each Unit autonomous and self-sufficient. Secondly, it will maintain the sense of responsibility of the Executive by compelling it to obtain the consent of the Legislature for fixing its rate of Income-tax as a means of securing its supply. Thirdly—and this is very important, I think—one Province will not be taxed for the benefit of another. Under the other system of the segregation of the source, with its single Federal rate for all Provinces and a division of the yield, the amount raised in a Province will not necessarily be the same as its share in its distribution; some Provinces may be giving more and receiving less. For these Provinces, such a system will be nothing else but a disguised method of taxing one Province for the benefit of another.

Now, the only objection that can be taken to the method I am suggesting arises from those who insist upon a uniform rate of Income-tax as being necessary for trade and industry. Uniformity of rate is, of course, something which is very desirable; but it is easy to exaggerate the importance of it. India is as large as Europe. There is no uniformity of Income-tax rate in Europe, and yet trade and industry are going on as well as anywhere else. Why should it be otherwise in India? Then again, those who insist upon uniformity in the rate of Income-tax have to explain how they can reconcile themselves to facts, such as they exist, regarding the Land tax in India. There is no uniformity there at all. On the contrary there is a bewildering variety of rates of Land tax. In no two Provinces are the rates the same, nor is the system of taxation in any two Provinces alike. This objection, therefore, must not prevail against the method of treating the Income-tax which I have suggested with a view—with due respect to members of the sub-Committee—to improving the allocation they have recommended. It meets the needs of all concerned in normal as well as abnormal times.

There is one statement which I made yesterday which I would like to withdraw. I said that my plan was the plan recommended by the Taxation Enquiry Committee. That was a slip due to an error which had crept into the notes which I had made for this discussion. I ought to have said that they considered it; they did not recommend it, although they did not see any insuperable objection to it.

The next point relates to paragraph 12 of the sub-Committee's Report, where the problem of "residual powers" of taxation is dealt with. The sub-Committee has anticipated that the decision will be in favour of the residual powers being vested in the Provinces. They have made, on that basis, the recommendation that the power to levy unscheduled taxes should be in the hands of the

Units. The sub-Committee gives no reasons at all why it came to that conclusion, but there is a passage in paragraph 12 which states that the sub-Committee sees constitutional objections to making any other recommendation than the one that they have made. From this it follows that the sub-Committee's view is that, in any federation, the residual powers of taxation must reside in the Units. *Now, my submission* is that this is not a necessary consequence of federation at all. If you will refer to the Constitution of Canada, Section 91, paragraph 3, you will see that the powers of taxation given to the Central Government in Canada, which is admittedly a federal constitution, are not limited by any such *proviso* as *enters* into the recommendation of the sub-Committee. The paragraph I have just mentioned is the widest possible that can be conceived. It gives the most unlimited power that any central government can have in *matters* of taxation. But perhaps it might be suggested that I have taken a wrong example because, under the Constitution of Canada, the residual powers are with the Central Government and not with the Units. Let me take another example where the residual powers are left to the *Units, namely, Australia.* There the *residual powers of taxation* are not given to the Units but are left to the Federal Government. The Australian Constitution, Section 51, paragraph (ii), says that the Central Government shall have the power of taxation, but so as not to discriminate between States or parts of States. Now, that *language again is the widest* possible language that can be conceived; and it is even suggested that that power is so wide that the Federal Government in Australia can be said to have the power of controlling the taxation system of the States. Let me refer you to the Commentary by Moore on the Commonwealth of *Australia,* page *298 of the first edition,* where *this point is dealt* with. This is what he says with respect to the extent of the power of taxation given to the Australian Federation:—

> "It has been seen that, on the establishment of the Commonwealth, the States are subject to the restriction, that they may not tax the property *of the Commonwealth;* that perhaps this extends to the 'instrumentalities of the Commonwealth;' and that, on the establishment of uniform duties of customs, they may no longer impose duties of customs or excise, nor put any tax upon inter-State trade, commerce or intercourse. Further, discriminations injuriously affecting British subjects resident in other States are inoperative."

What follows is very important:—

> "Finally, it has been suggested that the Commonwealth power to make laws with respect to 'Taxation' may give very extensive powers of regulating taxation by the States."

This is a constitution where the residuary powers lie with the States; yet, in financial matters, the residuary powers are not with

the States but with the Federal Government. Take the Constitution of the United States of America, Article I. There again, the residuary powers of legislation are with the States and not with the Federal Government, yet Section VIII of Article I of the United States Constitution provides:—

> "The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

There again, you do not find any limitation whatever placed on the taxing powers of the Central Government in the United States. I therefore do not see any substantial reason, so far as constitutional law is concerned, for the kind of recommendation that the sub-Committee has made.

My further submission, however, is that this question of whether the residuary powers of taxation should be with the Federal Government, or whether the residuary powers should be with the Provinces, is an entirely artificial question which has arisen in no other country. And the reason why it has arisen in India is because we have somehow introduced in our Devolution Rules of the present day a silly system—if I may be permitted to say so—of what are called schedules of taxation. This did not exist anywhere else and was never prescribed by any government or any constitutional authority that drafted a federal constitution. We are somehow not only dividing the spheres of taxation, but we are, by having these schedules, prescribing the particular method by which, and the particular form in which, that power of taxation shall be exercised; I do not think that such a thing is at all necessary. First of all, it is going to stereotype the taxation system and is going to limit the ingenuity of future Chancellors of the Exchequer. I do not think that any Chancellor of the Exchequer would like to take upon himself the responsibility of managing a financial system in which his discretion was limited, not only in regard to his powers of taxation, but also in the choice of the particular taxes that he might levy.

My view, therefore, is that we should altogether delete from our constitution these schedules and simply divide the field of taxation by the method that is followed in other federal countries —by putting a simple limitation on the Provincial Governments that they shall not make use of Customs or such Excises as the Federal Government chooses to impose, and leave the rest of the field for both Governments to divide in the way they like. That is exactly what has been done, as I say, in other federal countries; and I do not think, therefore, that it is at all necessary to introduce this principle of residuary powers of taxation in our constitution.

The next point I propose to deal with is the position of the States in Federal finance. When I turned to this part of the

Report of the sub-Committee, the first thing I naturally tried to find out was what head of revenue has the Federal Government gained from the States as an addition to its financial resources. I find that there is no additional resource given to the Federal Government by the States. As to Customs, it is obvious that this revenue was never the revenue of the States—to which they had no claim, and under which, therefore, they have taken no additional burden upon themselves. As to Salt, it is a revenue the right to which is vested in the Indian Government and not in the States by reason of the purchase. As to Currency profits, they are due to the credit of British India. Regarding cash contributions and revenue of ceded territories, these have been the sources of the revenue of the Central Government, and would have been so even *without federation. It is obvious, therefore,* that the States, by *entering into the Federation, have surrendered nothing to which they can be said to have any rights. The only contribution* that I see that they are making is in the form of a military force for the defence of India. Looking at the figure mentioned in the Report of the Committee which was appointed by the Government of India, I find that the total expenditure of this military force incurred by the States to-day is a paltry sum of 2 crores and 38 lakhs.

Another thing which I looked for in the Report was the comparative treatment accorded to the Provinces and the States in respect of the financial burdens of the Federation. When I saw this, I came to the conclusion that the sub-Committee had thrown the principle of equality of burden to the winds. Just see how this inequality runs through the whole Report. First, the Provinces are to bear both the "direct" as well as the "indirect" taxes of the Federal Government. The States are to bear only "indirect" taxes. The Committee does not even insist upon their accepting the Corporation tax. Not only are they not to bear "direct" taxes, but they are to be relieved of such "direct" taxes as they do bear at present, such as tributes and cash contributions. Secondly, the Provinces are prohibited from levying internal Customs, but the States are allowed to retain intact their right to levy *those Customs, although it is admitted by the sub-Committee that one of the objects of the Federation is to have freedom of commerce throughout the Federation, and although the Committee recognises* that the continued maintenance of the right of the States to internal Customs is likely to impinge upon Federal receipts. Thirdly, the Provinces are required to pledge their revenues as a security for Federal loans; but the States, although they are to be Units of federation just as much as the Provinces, are to be free from the burden of this obligation.

One can quite understand the reasons for allowing the States the right to retain their internal Customs. One can see that, if they are compelled to take off internal Customs all at once, it will disarrange their financial stability. But one cannot understand why the sub-Committee should have allowed the States the freedom

from bearing direct burdens of the Federal Government, nor can one understand the reasons which led the sub-Committee to recommend that the States should not be required to pledge their revenues in support of Federal loans.

Now, Lord Chancellor, in ceremonial matters a discrimination between the Provinces and the States may be permitted. We may refuse to ourselves the honour of the salutes, and we may let the States have what they want in respect of that; but when it is a matter of the purse, I think we ought to follow the maxim that "business is business". If British India is making a sacrifice in the interests of federation, it has an equal right to call upon all the other Units to make equal sacrifices in the interests of federation; and I therefore urge that the following amendments to this part of the Committee's Report be made:—

(1) That the States must accept the right of the Federal Government to "direct" taxation. Until this is done there should not be remission of cash contributions and no consideration of ceded territory.

(2) A time limit should be fixed within which the States should be required to abolish their internal Customs by an appropriate change in their fiscal system which shall not injuriously affect the fiscal system of the Federal Government.

(3) The States must be required to pledge their revenues as security for Federal loans.

That is all I have to say, Lord Chancellor, on this matter.

Mr. Iyengar: My Lord, I had hoped, when we of the Federal Finance sub-Committee presented a unanimous Report of the kind we made, that it would have been accepted and taken as the basis of the Federal Constitution Bill, with a more or less general debate conveying the observations of this Committee for the Plenary Meeting. I am free to confess, My Lord, that the actual wording of paragraph 4 of our Report and of our recommendations regarding the appointment of the Expert Committee have unfortunately introduced an element of doubt, which I, for one, believe was not in the mind of any one of us of the British Indian section on that sub-Committee. I feel, however, after what Dr. Shafa'at Ahmad Khan and Sir Maneckjee Dadabhoy said yesterday, as well as the day before yesterday, as to what we meant by our recommendations, that I should state my position clearly and that I should appeal to Their Highnesses and the other Indian States representatives—and in particular to Sir Akbar Hydari, without whose valuable and sympathetic lead we should not have been able to arrive at so many of our unanimous recommendations—to support the sound and wise suggestion of Mahatma Gandhi that we refer this Report back to the sub-Committee and ask it, with the material at its disposal, to give us a minimum scheme to start with. Those are the words of Mahatma Gandhi.

My Lord, it is now clear that the remission of the whole of our Report to the Expert Committee *before* the Federation is agreed upon or started will be to hang up the whole of the fundamental constitutional issues. This is a consummation which, I am sure, Their Highnesses would be the last to desire to bring about at this stage. Whether or not the South African parallel is complete, there can be no doubt—and it is common ground—that the second Expert Committee, or the second part of the expert enquiry, can come into being only after the Federation is established, and that certain complicated questions involved will have to be settled later. I find that, in our ambitious attempt to give a finished picture, we agreed to put even the agreed conclusions into the scope of the enquiry, and that thereby we have raised a difficulty not contemplated by us. I would therefore warn the sub-Committee or this Committee, if need be, to separate these agreed matters, and put them into shape, and so to start the Federation on its *minimum* basis, thus removing the difficulty of the financial scheme not being ready for immediate use. Shall we not recognise that, in regard to the first part, there is already sufficient agreement in general terms that can be laid down to-day after further scrutiny and consultation, and then put them in our recommendations for the drafting of the new constitution?

The general principles that are sufficient, it seems to me, to form the basis of the Federal Constitution on its financial side, have been agreed to by the sub-Committee unreservedly, no less by the representatives of the States than by those of British India, *and they have commanded a wide measure of approval here also.* I would set forth tentatively the propositions thus agreed to, and would submit that, if the sub-Committee can meet again and put them into shape, they could be the principles on which we could start. They may if necessary be even amplified or revised later by suitable provisions. The rest of the recommended principles that may require further elucidation may be settled, it seems to me, *by the Federation itself.*

We start on the assumption that the replacement of the present Government by the Federal Government is not to involve any disturbance of the existing position. That is laid down on page 4 of the Report. I would recast it in the following clause of the constitution, if an *inexpert draftsman may do so*:—

> "Parliament shall have power to levy taxes, or duties for imports in accordance with the allocation of resources hereinafter made as between the Federation and its Units—Provinces, States, and territories—save as hereinafter provided; and *until Parliament* shall otherwise provide in accordance with the procedure hereinafter laid down, the existing distribution of resources between the Federation and the various Units shall continue undisturbed."

Similarly we may provide on an agreed basis that there shall be paid, out of the *revenues of the* Federation, the interest and debt charges, subject to scrutiny and expert enquiry.

The next recommendation will be in regard to the allocation of the resources referred in paragraphs 8 to 10 of the Report. The revenues shall be from sources of Federal and Provincial taxation, the resources of the Indian States being specified or not, as the case may be, but with their present rates. I have made a proviso about the Corporation tax in accordance with the recommendation made; namely, provided the Corporation tax or any other tax that may be lawfully imposed by the Federation shall not be imposed on the Units until and after the enquiry hereinafter proposed establishes to the satisfaction of the Federal Parliament the necessity for such fresh taxation.

The other recommendations made are as follows:—

The constitutional right to levy any other unscheduled tax rests with the Provinces or the States as the case may be, subject to the condition that the levy of the tax does not conflict with the rights of the Federal Government to tax its resources.

Transit duties, whether in the Provinces or in the other federating Units, are hereby forbidden.

Internal Customs shall not be levied by any of the Provincial Units. The Indian States joining the Federation may continue the duties at present levied until such time as they are able to make arrangements, by finding other resources or otherwise, for their abolition.

No power of taxation or raising of revenue possessed by the Provincial Governments or States shall be exercised in such a manner as to conflict with the international obligations of the Federal Government under any Commercial Treaty or International Convention.

The property of the Federal Government shall be exempt from taxation for the purposes of Provincial or State Governments.

In cases of grave emergency and for the protection of the credit of the Federation, the Federal Government may, with the assent of the Federal Parliament, call for contributions from all Units of the Federation in the manner hereinafter to be agreed upon.

Sir Akbar Hydari: How is that worded?

Mr. Iyengar: "In the manner hereinafter to be agreed upon" or "as laid down by the Federal Parliament," whichever you prefer.

There shall be constituted, on the coming into operation of the Federation, a Federal Loans Board, for the purpose of advising on and regulating the borrowing operations of the Federation and the Provinces and such State Units as may desire to do so. The constitution and powers of the said Board shall be laid down by the Federal Parliament after the recommendations of the Expert Committee in this behalf are known.

Provincial Balances shall remain in the custody of the Federal Government for the purposes of the Provincial Government until a Reserve Bank is established.

The revenue of the directly-administered areas shall rest in the Federal Government, and the expenditure of those areas shall be a charge on the Federal revenues.

I would then put down a clause for the expert enquiry in these terms:—

> "As soon as may be after the coming into operation of this constitution, a Commission shall be appointed who shall investigate and report on the following matters to the Federal Government for such action as it may decide to take on the advice of Parliament."

Then we can put down all the matters which we have recommended as being matters for expert enquiry, such, for instance, as Ports, Maritime Customs, Cessions of territory, Army Contributions and various other matters.

If I may say so, the immediate result of our proposals deals mainly with the Provincial position in respect of Income-tax and in respect of Railway revenue, in connection with both of which we have made proposals to equalise burdens and resources amongst the Units without putting the States in any immediate prejudice as to their resources and liabilities. Even with regard to internal Customs, which it is the primary object of all federations to abolish, we have recognised the right of the States levying them to accomplish the desired consummation in due course. There is no new burden imposed on them.

I would therefore strongly appeal to all the members of the Committee, and to the Indian States section in particular, to accept, the wise and sound course suggested to us by Mahatma Gandhi.

Lord Lothian: It is with some hesitation that I intervene in this debate, because my knowledge of Indian finance is very rudimentary; but obviously the matters which have been under discussion to-day and yesterday, and especially the question of the division or financial resources between the Provinces and the States and the Federal Government, raise an issue which goes to the root of the problem of federal government in every country in the world. I do not think there is any doubt that the experience of all the federations of which we have knowledge to-day has led in every single case to the central government either exercising or retaining the right to exercise some powers of "direct" taxation—and notably Income-tax—for their own purposes. I think that is the universal experience of the history of the world.

The proposal which has been put forward in the Report of the sub-Committee is that the Federal Authority—the Federal Parliament—should, as I understand it, both determine the rate and collect the tax, both legislate and collect, and then hand over all the

proceeds to the Provinces. Presumably there would be some statutory or constitutional regulation requiring them to do so, because most governments which have succeeded in collecting money are very reluctant to hand the whole of it to anybody else if they can possibly find any means of keeping it in their own hands. I venture to make this query as to whether that is really a practical proposal, for this reason. I have been impressed, during the discussion in this Committee, with the fact that inevitably the discussion has proceeded on the assumption that the new Government of India is going to function in many ways like the old; that it is a question of substituting what I might call an Indian Raj for a British Raj. I have the feeling, from some experience of government, that what is really happening is that we are creating an entirely different system of government, for this reason. The existing system of government rests on the fact it is wholly centralised, and that the ultimate source of power at the moment is outside India and not inside India, and that every functionary in India, including the Provincial Governments except in the transferred sphere, are really ultimately under the control of the Central Government. But there is really a single policy. Whether you agree with it is neither here nor there; but ultimately there is a single policy which prevails throughout India. It is the policy which is determined by Government, subject to the influence of Indian opinion, but not under the control of Indian opinion. Just as soon, for instance, as you get responsible government in the Provinces, that situation must fundamentally change, quite apart from communal and other considerations, for this reason, that the authority of the Provincial Governments will be derived from the electorate. The first consequence of Provincial autonomy or National autonomy is that power passes from Government to parties; that is to say, those groups who can persuade the majority of the electorates to return a majority of the Members in each Legislature. And every Provincial Government, from that moment onwards, is imprisoned, and absolutely imprisoned, within the limit of what the majority of that Provincial Parliament can agree to. It cannot go outside it. It seems to me quite impracticable (this perhaps is slightly off the present point, but it will come up next week) that any Provincial Government could accept orders from the Centre at all.

Apply it to this situation. The proposal is that the Federal Government should enact and collect the taxation and transfer it to the Provinces. Presumably, if that is so, it will have to do so from the standpoint of what it is necessary for the Provinces to have. The people who will judge that are the Provincial Governments themselves. How are these Provincial Governments going to be brought into touch with the Federal Government? You are going to have very many different parties, and many conflicting interests. In one Province you may have a party which is, on the whole, what you would call agricultural; another industrial; another interested in some communal issue—all with very different

ideas as to what degree of taxation is required. How are you going to get the rate; or are you *going to say that the Federal* Government itself is going to legislate as to what the Provinces *ought to have in their own interests?* You have got two difficulties. The first is, if you call the Provinces together and ask them, and they agree upon the rate—say a shilling Income-tax, or half-a-crown, or whatever it is—will you get agreement? And supposing you do not do that, are you going to say that the Federal Government itself is going to determine, wholly in the interests of the Provinces, what the Provinces should have? My own feeling is that, in practice, a system by which the Federal Government, which is no longer unitary and centralised but which has what you might call a horizontal field of government of its own, as opposed to another horizontal field which belongs to the Provinces, will be *unable to exercise the powers of determining the Income-tax* and hand all the proceeds over to the Provinces. It will neither face the *odium* involved, having none of the responsibility for spending the money, nor will it be able to secure any reasonable assent from the Provinces. My own view is that Dr. Ambedkar is right in thinking that you will in fact be driven to dividing the Income-tax source between the two Governments, and that, either by the method of the *centimes additionels,* which is a very familiar one, or the other one which he mentioned, you will have to allot to the Provinces certain definite elements in the Income-tax, and leave to the Federal Government the responsibility for adding what it *thinks it can afford to add for its own Federal purposes.*

Now, there is one other aspect of this question which I should like to mention, and that is this. I think experience shows that what is essential is that, as between the Provinces and the Centre, there should be a definite and immovable statutory line. Nothing is more fatal than that you should have an annual controversy between the Centre and the Provinces *over the division of the* sources of taxation. It makes anything like co-operation by the Provinces impossible. It makes sound budgeting, either by the Centre or by the Provinces impossible. You have got to say, anyhow for a period of time, to the Provincial Finance Minister and to the Federal Finance Minister, *"There are your statutory* rights; it is within those limits that you have got to provide for *your revenues and expenditure, and you have got to budget for a period of time."* If you once begin to do what you do in India to-day, and easily do in India to-day—that is, have negotiation between the Provinces and the Centre, which is easy because the Centre and the Provinces are really one government—if you try to do that when the Provincial Governments are responsible to Legislatures on a party basis and the Centre is responsible to another electorate, you get a hopeless controversy and the breakdown of government itself.

Before the South African Convention met, Sir Henry De Villiars, the very distinguished Chief Justice of South Africa,

went to Canada with a view of studying the working of the Canadian Constitution before presiding over the South African Convention; and as he left Canada, he went to see Sir Wilfrid Laurier, who was one of the oldest and most distinguished politicians in the country, and asked him whether he had any advice to give to the incipient Union of South Africa. Sir Wilfrid Laurier's reply was, "I have only got one piece of advice; avoid the pitfall of concurrent jurisdiction." Any proposal that you should annually discuss the distribution of revenues between an autonomous Province and an autonomous Centre raises, in its most acute form, that problem of concurrent jurisdiction.

The third point I would raise is in regard to paragraph 21, the emergency powers of the Federal Government. Is it really practical politics, under a system of government such as we are now contemplating, in which the Provincial Governments will be responsible to their own electorates and their own Parliaments, and not responsible to or under the control of the Centre at all—is it possible, under such a system, to rely upon the Provinces voluntarily making any contributions, even in emergency, to the Centre? I think experience shows that it breaks down for this reason, that you find the Provinces or the States saying, "Yes, in principle I agree, but I can only do it if we all do it on a uniform basis." The American Confederation broke down wholly on that point. Bombay will say, "I will give something, but only if Bengal gives the same amount," and you will find that the Legislatures do not agree and the thing breaks down hopelessly. You are driven, I think, in every case to insist that each aspect of the Government, the Provincial on the one side and the Federal on the other, has its own sources of revenue statutorily attached to it and has to live within the limits of its own powers. That is all I have to say.

Sir Maneckjee Dadabhoy: My Lord, in the course of the last two days, we have heard some very valuable contributions made by some of our colleagues on the question of Federal finance. In the course of their arguments we have discovered, not only conflicting opinions, but in some measure, if I may be pardoned for stating it, inconsistency in argument. On the whole, we are grateful—and I am sure I am expressing the sentiments of the members of the sub-Committee—for the reception given to our Report. Except for what we have heard from our friend, Dr. Ambedkar, who has made a wholesale condemnation of our Report, there seems to be, on major points, a general agreement with and approval of our recommendations. I will ask the members of this Committee to bear in mind the very difficult task that was entrusted to us. It was a task which, I assure this Committee, we approached with a desire and intention to do our very best, and to weigh the various considerations and conflicting interests that were involved in the question of the formation of a Federal financial scheme. We weighed every question from various aspects

and with a desire to bring to fruition the earnest wish of us all, namely, to have a general Federation for India. It was from that point of view, as Dr. Shafa'at Ahmad Khan has pointed out, that we had to go in, to some extent, for a system of compromises. I would also associate myself with the tribute which Dr. Shafa'at Ahmad Khan has paid to our Chairman, Lord Peel, for his tact and for the ability with which he conducted those debates. If it had not been for that, we should not be in a position to present this Report to the Committee.

My Lord, we have in our Report dealt with the question in an adequate manner and, on the materials that were available to us, no other decision was possible. It is very easy to criticise a report and to find a fault here and a fault there; but only those who have had the duty of formulating these proposals can understand the difficulty of putting forward a scheme which would not only be acceptable to British India but which would also be acceptable to the Indian States, whose interests in various other matters are, so far as internal taxation is concerned, not in agreement with any policy of Federal finance. I do not blame the Indian States in the least for the attitude taken up by them. They were perfectly justified. We are now devising a scheme for India which is unparalleled elsewhere in the history of the world. India is not a homogeneous country with singleness of interest and with singleness of purpose. It is a heterogeneous country, or rather continent, in which diverse and conflicting interests are involved; and it is therefore not easy to arrive at a solution which will be wholly acceptable without fault-finding here or there.

Our great aim and object, which we kept in view throughout, was to bring the Indian States in with us. I would remind this Federal Structure Committee of what took place some time ago in the Plenary Session of the Conference. We were distinctly told by Lord Reading on behalf of his party that responsibility would be given at the Centre only on condition that the Indian States came into the Federation. The Conservative group made no secret of their views on the subject, and left their ultimate decision until they could see the picture which would finally be placed before them. In view of the expression of those views, we had of necessity to accommodate ourselves to the position, and, if we wanted federation, it was necessary to carry the Indian Princes with us and have a full measure of their sympathy; for federation was practicable only under those circumstances.

The initial difficulty was in the matter of "direct" taxation. The States are precluded, by reason of their geographical position and other circumstances, from obtaining revenue by means of "indirect" taxation. They have to depend fully on "direct" taxation, and it was natural for them to refuse to enter into the Federation if their available resources—the resources which they could collect for the administration of their territories by means of "direct" taxation—were to be seriously affected. It was natural

for them to say that, if the Federal Government was going in for a scheme of "direct" taxation also, they would be injuriously affected, inasmuch as it would cripple their resources; and therefore it would not be possible for them to come into the Federation. There is much cogency and strength in that part of their argument, and we could not possibly overlook that. We could not honestly and conscientiously ask the States to come in by making huge sacrifices of their revenues. It would have been a preposterous request on our part to have asked the States to do so. There were serious difficulties with which we were faced, and it was in order to arrive at a settlement and to carry the Indian States with us that we found it obligatory on our part to accommodate them to an extent which would enable them to come into the Federation and enable the Federation to be a reality and a success.

I agree in a great measure with the remarks made by the Marquess of Lothian. We felt the propriety of what he has stated, and it lead us to insert the sub-paragraph of our Report under head 15, Taxes on Income. I will read the sub-paragraph:—

> "We are agreed that such taxes should still be collected from the whole of British India by one centralised administrative service. Most of us are also of the opinion that uniformity of rate should be maintained, since variations of rate may lead to unfortunate economic consequences, such as discrimination between industries in different Provinces. Some of us take the opposite view, both because of the constitutional difficulty mentioned below and because of the difficulty of securing uniformity in all Units. The subject is clearly one to which the Expert Committee should devote much attention."

We realised the difficulty; we expressed our views; and we have asked the Expert Committee to revise our decisions if the circumstances necessitate it.

My Lord, there seems to be a considerable amount of conflict of opinion on the question of this Expert Committee. Sir Tej Bahadur Sapru very rightly pointed out, when he opened the debate, that we had not discussed the character and composition of this Committee. My Lord, it would have been a difficult task for us to have actually led either the Federal Government or the Crown as to the choice of its members. We knew that there were conflicting opinions. We knew that one view was to go in immediately for a federation and to give the Federal Government the right to exercise its choice of appointing this Expert Committee and then remoulding the constitution in the light of the recommendations made by that Committee. The other view was that the Crown should nominate an Expert Committee, who would carefully consider the recommendations made in our Report and then subject them to the acid test of verification by examining the statistical position of all the Units as well as of the proposed Federal Gov-

ernment It was with this object that we stated in our Report that, immediately this Conference has ended, the Government should with the least possible delay, appoint an Expert Committee. That was an explicit and a unanimous recommendation of our sub-Committee.

Now, Sir, there is some difference of opinion as to character of this expert body. My friend, Sir Akbar Hydari, to whom it is always a great pleasure to listen on account of the sanity of the views which he generally propounds, expressed a view with which I feel a little diffident in agreeing. His contention was that the Expert Committee should be a representative one, in which there must be representatives of Indian States' interests present to decide the question. My Lord I share the view so ably expressed by our Chairman, Lord Peel. Lord Peel made it perfectly clear in his opening speech that we contemplated for this Expert Committee a constitution of an entirely different kind, a constitution not of representatives of British Indian interests and representatives of the Indian States, but we contemplated men of such standing and ability and financial knowledge, so free from local and provincial prejudices, so detached from political views generally, that they would be a body of people who could be trusted and who would be in a position to examine the subject with absolute impartiality and fairness, and whose decision would not be unfair to any constituent Unit in the contemplated Federation. I am still of opinion that, if we want an Expert Committee which will be capable of doing its business properly, effectively and efficiently, it is a Committee of that kind alone which will be able to throw light on the complicated questions involved in the solution of the problems of Federal finance—which alone will be in a position to deal with the subject comprehensively and adequately. My Lord, I may tell my friend, Sir Akbar, that if his own representatives—names of men of ability, I have no doubt, will be submitted—are put on this Committee, or anything like that, I know how these men will be bound by the circumstances of their position. They would be pledged to support the interests which the Indian States put forward, and the position would be a similar one in the case of the British Indian representatives. It is therefore better to consign this task to a Committee which would be absolutely free from all suspicion, and which would receive the confidence of all the different parties.

In the course of our debate, there have been some points raised regards the stage at which this Expert Committee should come to operation. From the speech of my friend, Sir Tej Bahadur pru, I gathered that it was his inention that this Federation ould come into existence immediately, and that, after the Federation has come into existence, that Federation should be the body t should appoint this Expert Committee; and from the reasons ch I gathered from an examination of the speeches of Sir Akbar lari on two occasions—matters which he criticised in the course

of his arguments—it appeared to me that he was not anxious to create this Federation immediately. If a federation can be created by a stroke of the pen—a federation which would be a lasting one —I would subscribe to that immediately; but, with great respect, I have to differ from my friend, Sir Tej Bahadur Sapru, on this occasion. I am inclined to agree with Sir Akbar Hydari, who has put forward the case on behalf of the Indian States, that they should have in their possession the full and complete Report of the expert body before they are in a position to state whether they would join the Federation or not. I must give some measure of credit to Sir Akbar Hydari for the bold front which he has taken in agreeing, on behalf of Hyderabad, and expressing his personal views in favour of coming into the Federation immediately; but he pointed out yesterday that he had to consider the case of a large body of Indian States, and it would be very necessary for them to examine the grounds on which they could come to that conclusion. That case was emphasised and made absolutely clear by His Highness The Maharaja of Bikaner, who pointed out the difficulties of the Indian States. And I must say that if, we examine this question impartially and rationally, I think there is a great deal of reasonableness in the suggestion of the representatives of the Indian States who have placed their position before us.

It has been said that this Expert Committee will take an infinite amount of time, and that the chances of the Federation probably might be impaired. I do not personally think that this Committee will take a very long time; and even assuming—what has been stated in the course of the debate—that it will take six or twelve months, what is a period of twelve months when we are framing a permanent constitution for India? What is a period of twelve months when we realise that a considerable amount of spade-work will have to be done, both in India and in England, before the constitution is brought into operation? We are fully aware that even the Franchise Committee has not started work. In the Simon Report there are recommendations regarding the readjustment of various administrative areas, and that work has not been even started. Until all that work has been completed it will be impossible to start the Provinces with an autonomous form of Government, and still more impossible for the Federation to come into immediate operation.

In the circumstances, I do feel that it would be judicious that the Expert Committee should be appointed, in conformity with the recommendation of our sub-Committee, at an early date, and that, meanwhile, other enquiries should be prosecuted, and a proper and adequate chance be given to the Indian States to consider their position. On the other hand, I feel that, if a hasty step is taken, the result will be that we shall drive away the Indian States from the idea of the Federation. They will say that they will not come into the Federation blindfold and without knowing what they are to accept. I think it would be a perfectly legitimate

position for the States to take up. I therefore trust that better counsels will prevail, and that all my colleagues here will agree that it would be a wise step to allow the Crown to appoint this Expert *Committee without the least possible delay, and that other* work of a preliminary character, other spade-work, may be proceeded with meanwhile.

Dr. Ambedkar *has spoken about the inequality of the burdens* which our sub-Committee has recommended. He thinks this is unfair. I am sorry Dr. Ambedkar is not here at the moment. His speech had a great academic value; I cannot for a moment deny it. I heard that speech with the greatest possible interest. Dr. Ambedkar, however, forgot to take practical politics into consideration. How can we assimilate conflicting interests into a harmonious unity and bring about a settlement satisfactory to all parties? That is what we have to consider. He asked "Why are you allowing the Indian States to go scot-free and not pressing them to hypothecate their property in the matter of your loans?" He *forgot or did not understand that, if that condition were made,* it would immediately drive away the States from the Federation. We had to steer a safe middle course. We roped in the Indian States wherever we could possibly rope them in with safety to their interests and with advantage to the interests of British India. But we had to draw the line somewhere. We cannot ask them to make every possible sacrifice to come into the Federation; it would have been unreasonable to do so. Moreover, India is different from other countries; no precedents regarding what has happened in other countries apply to the case of India, as I have already stated. We have to find a form of administration which will be not only compatible with the financial position of the different Units but also in consonance with the needs and genius of the country itself.

We have therefore to take all these important factors deliberately into consideration before coming to a decision. It is all right from the theoretical point of view—I learnt all about this when I was a boy—to talk about *equality of taxation and equality* of this and equality of that; but when you come to import such *ideas into practical politics there are other considerations* which have to be borne in mind, unless you are going to wreck the whole scheme of federation. As Lord Peel pointed out, we have to hold an even balance not only between the Units and the Federation, but between the States and the Units. Lord Peel was perfectly correct in pointing out that there were no champions of federation represented on the sub-Committee, and he very appositely said that few are the champions of unborn children. I entirely share his views. We did all we possibly could to see that the general interests of the Federation were in no way impaired or prejudiced in the decisions and in the final conclusions at which we arrived. We had to nurse, *from every point of view, the different conflicting* interests.

minimum scheme to which the States agree, and that we should accept that scheme as a scheme to start with, without any encumbrance in the shape of an Expert Committee. The Mahatma, however, did not make clear what he meant by a minimum scheme. I am still at a loss to understand what is meant by a minimum scheme. I have, however, a graver constitutional objection. If you are going to put the Federation into operation, you cannot do it by a patch-work system and you cannot work on a piecemeal basis. If the Federation is to come into operation, it should be a full, complete, all-absorbing Federation, which will leave no room for doubt or difficulty. You cannot make arrangements for a sort of partial Federation. If the Federation is to be brought about, moreover, it must be in conformity with the general principles which underlie all such federations. Moreover, does Mahatma Gandhi feel certain that, even if we have a minimum scheme, the Indian States are going to agree to that?

Mr. Gandhi: That is the crux of my scheme.

Sir Maneckjee Dadabhoy: I should like you to ask them whether they will agree. In paragraph 4 of our Report, we set out some important questions to be decided by an Expert Committee, and we have made it clear that some constitutional questions—namely, those discussed in paragraphs 5 to 17 and 21 to 25 of our Report—should be dealt with in that way. Are the Indian States going to agree to any patch-work scheme which we may design for the moment for getting the Federation quickly into existence? My Lord, if a Federation is formed on such a slender foundation, that Federation will come to grief; and I, as one who is anxious that the Federation should be a success, cannot, with great respect to Mahatma Gandhi, agree to any such suggestion as he puts forward.

There is another point to which I should like to refer in this connection. We have had a large amount of material at the disposal of the sub-Committee, and we have made use of that material. If this matter is again referred to the sub-Committee, is it possible that we should come to any other decision than that already arrived at by us after great reflection and mature consideration? Is it possible that the sub-Committee is likely to alter its findings in important particulars? Is it possible that, unless some new material is brought before it, it will come to decisions other than those at which it has already arrived? If the Report is remitted to the sub-Committee, I, for one, will welcome Mahatma Gandhi to be a member of it. I shall welcome his aid and assistance in the elucidation of these difficult problems. But My Lord, I must point out that it would be a waste of time if this Report were to be sent back to the present sub-Committee for the reconsideration of the subject.

My Lord, I do not know whether I should take Dr. Ambedkar seriously and deal with the various questions which he has placed before us this morning; but I think, in view of the paucity of time and in view of Your Lordship's anxiety that our debate should be closed this afternoon, and in view of the fact that there are other

members who are anxious to speak and who ought to be allowed their opportunity to speak, I will not go into a full examination of Dr. Ambedkar's suggestions. But I must point out one thing (though he corrected his previous statement this morning), namely, that the reference which he made to the Taxation Committee was not correct. I will draw Your Lordship's attention to paragraph 536 and also to paragraph 537 of the Report, in which the Committee has stated something entirely different from what was said by Dr. Ambedkar. I will read the passages:—

> " What they would propose is to give the Provinces the proceeds of a basic rate on personal incomes graduated proportionally to the general rate For this purpose, the basis of calculation would be the personal returns submitted under section 22 (2) of the Indian Income-tax Act, which provides for a statement of the income derived by the assessee from all sources, including dividends from companies wherever situated.
>
> The whole of the collections on incomes that do not appertain to residents in particular Provinces, such as the tax on undistributed dividends of companies or on incomes of persons resident abroad or residents in places outside the boundaries of the Provinces to which the allotment was made, and the whole of the Super-tax, would go to the Government of India
>
> In addition to the allotment made on personal incomes, the allocation of which is based entirely on domicile, the Committee would recommend the giving of a partial recognition to the principle of origin by assigning to each Province a small portion of the receipts of the Corporation profits tax."

My Lord, I will conclude now with an appeal. My colleagues want the Federation to be established as quickly as possible I know that it is the general wish that it should come into operation as early as possible. It is our devout wish and desire that India should be placed as early as possible on the path of progress and that she shall take her rightful place in the comity of nations as early as possible. My Lord, that object will be best achieved by all my colleagues here accepting our Report at this stage, and allowing such improvements to be made in it by the Expert Committee as may be necessary—whose suggestions we shall receive with great respect, sympathy and readiness. I therefore say the practical way for this Committee, as is always the case in general matters, is to accept this Report for whatever it is worth at present, and then, after examination by the Expert Committee, everyone will have the right further to suggest such improvements, modifications and changes as may be necessary. I humbly submit, My Lord, that this is the only wise step which this Committee, if it is anxious to expedite the consummation of the Federation, can adopt.

Sardar Ujjal Singh: With your permission, Lord Chancellor, I wish first of all to congratulate Lord Peel and his sub-Committee on their excellent Report. On the majority of the recommenda-

tions I am in agreement with the Report, and I would like, therefore, to make only a few observations.

I agree with the proposal of setting up an Expert Committee of Enquiry to work out the details of the financial problems. I must say that Sir Tej Bahadur Sapru and Sir Akbar Hydari have, between them, exhausted this subject. I would only say this much, that the Committee should consist of plain experts who must have experience and knowledge of Indian financial problems.

(The Committee adjourned at 1 o'clock and resumed at 2-30 p.m.)

Sardar Ujjal Singh: When we adjourned this morning, I was proceeding to discuss the composition of the Expert Committee which is recommended by the Federal Finance sub-Committee. I said that that Committee ought to consist of plain experts with experience and knowledge of the financial problems of India. But if the object is that the Committee should be composed of experts and should not have a representative character as such, then in my view the object is best served if we have one Committee instead of two. My reason is this, that although the two Committees will be engaged on different tasks, yet, for the purpose of co-ordination and of adjustment it is necessary that both the Committees should understand one another's difficulties. If these two Committees work separately, the danger is that they may become champions of the various fields of enquiry in which they have been engaged. In my view, all the fields should be explored by one Expert Committee. That Committee, I believe, will be able to finish its work within six months. It will certainly work in India and will call for evidence. But an enquiry of this nature should not be different from the enquiry in which the Franchise Committee and other similar Committees will be engaged. The object is to lay down broad principles and then to leave the details to be worked out by such enquiry committees. If the broad principles, as laid down in this Report, are not sufficiently broad, then, as suggested by Mahatma Gandhi, the Report might be referred back to the Finance sub-Committee. But I feel we are all anxious that, on this account alone, the work of the Conference should not be held over. We are all anxious that, when this Conference completes its work, the Federation should be an accomplished fact. For it to remain in suspense, even when this Conference is over, would be, I believe, disastrous to all.

Coming to the Public Debt, I agree with the sub-Committee that "No classification of pre-Federation debt as Federal and "Central" for constitutional purposes could be contemplated of such a kind as to affect the position of the lender." The division into Federal and "Central" for accounting purposes could, I believe, be done away with if proper account is taken of all the capitalised value of the profits from Railways and all the Public Works of the present Central Government, which it is contemplated will be handed over to the Federal Government. I do see, however, that there can be no credit balance in favour of the "Central" Government as such.

because, as has been rightly pointed out, some of those Public Works have been financed from resources which are to be Federal and which in the past have been more or less Federal, in the sense that the States have been indirectly contributing.

Coming to paragraphs 8 and 10, on the allocation of resources between the Federal Units and the Federal Government, I agree with the general principle that Federal resources should, as far as possible, be confined to revenues derived alike from the inhabitants of the Provinces and the States. That does not rule out " direct " taxes, but indirect taxes certainly satisfy the test better. If " indirect " sources alone are not found to be sufficient for meeting the Federal expenditure, then I do contemplate that resort will have to be had to some kind of " direct " taxation. I do not know whether the States would be prepared to impose, or to allow the Federal Government to impose, Income-tax on their subjects; but, even if there is objection on the side of the States, there can certainly be no similar objection on the side of the Provinces, and in that case the States should contribute their quota towards the Federal exchequer in the shape of cash contributions.

In normal times, more money is needed in the Provinces than for the Federal Government, whose duties will specifically be for the protection and tranquillity of the country as a whole, while the welfare of the people and development of the " nation-building " departments will be the concern of the Provinces. It is necessary, therefore, that the Provincial resources should be more elastic and should be more adequate than has hitherto been the case. In the Federal sphere, I believe that the real solution will be found to lie, not in giving more classes of taxation to the Federal Government, but in the reduction of expenditure, which is considered to be very heavy at this juncture.

Regarding paragraph 11, which deals with internal Customs tariffs, I do believe that internal Customs are an impediment to the free movement of trade, and so no Province or State—no Unit of the Federation, in fact—should be allowed to levy internal Customs. There is a difficulty, in the existing conditions of India, in that some States do levy internal Customs; but I agree with the recommendations of the Finance sub-Committee that it would not—

> " seem to be, in general, an equitable plan for the Federation to attempt to buy up, so to speak, the existing rights of the States in such a matter. This would simply mean that, in the general interests of economic unity and to facilitate trade, a tax would be imposed on the Federation as a whole in order to relieve the inhabitants of the States."

So that, to give any relief to the inhabitants of the States by the abolition of internal Customs, no equivalent burden ought to be borne by the Federation.

The States should be left to abolish those internal Customs in a reasonable period, and to substitute some other form of taxation; but they should in no case be allowed to raise the Customs duty

from the existing Schedule, and no other State should be allowed to have resort to internal Custom. I would go further and suggest that some time limit ought to be given to those States which levy internal Customs now, so that by that time—say within five years—internal Customs should automatically be replaced by some other form of taxation.

Turning to paragraph 12, with regard to unspecified taxes,—that is, the residuary powers of taxation—I am not quite clear in my mind whether these powers should ultimately reside in the Centre or in the Provinces; but even if these powers are vested in the Provinces, ample provision should be made for the Federal Government to resort to any form of taxation during times of grave emergency such as war or a financial crisis. Unless such powers are given to the Federal Government, it would be disastrous to India as a whole to vest residuary powers in the Provinces.

Chairman: Would you repeat that?

Sardar Ujjal Singh: It would be disastrous to the interests of India as a whole if, without providing ample powers to the Federal Government in cases of emergency, residuary powers were to vest in the Provinces.

Coming to paragraph 15, I agree with the sub-Committee that Income-tax, though mainly utilised for Provincial purposes, should be collected and administered by the Central Authority. It is necessary, in the interests of trade and industry, that the rate of Income-tax should be uniform throughout India. India, of course, is a big country, but it is not like Europe. Our Provinces are not so different from one another as the European countries are. I am quite alive to the argument put forward by Lord Lothian, that Income-tax would not be properly collected by the Central Authority which has no interest in the matter, and distributed to the various Units—the Provinces. But, in spite of all that criticism, at present there appears to be no remedy but to let the Income-tax be collected Centrally and then distributed to the Provinces.

In regard to certain classes of income—for example, agricultural income—I would leave it to the Provinces to levy Income-tax and to collect it, because agricultural income is so closely connected with Land revenue. Of course, for our immediate purposes, agricultural income is not of such great importance, because at present the unparalleled low level of prices has made it impossible for any sort of Income-tax to be levied on agricultural income; and, if such incomes have to be taxed, Provinces with a permanent settlement will be in a better position to do so than those Provinces where the system of Land revenue is revised after a certain period.

There is one other point that I want to mention with regard to paragraph 15, Income-tax. The sub-Committee has suggested that the poorer Provinces should be helped from the Income-tax. I do not agree with the Committee's recommendation on that point. Income-tax is to be collected from various Provinces and ought to be distributed to these Provinces if no portion of such receipts is

to be utilised for Federal purposes; but if any poor Province has got to be helped, it must be helped from the Federal sources, after careful scrutiny by the Federal Government, and not particularly from the receipts of Income-tax.

Coming to paragraph 16, I do not agree with the sub-Committee that the Federal deficit due to Income-tax being allocated to the Provinces should be met by Contributions from the Provinces. If there is any deficit in the Federal Budget, it ought to be met from contributions, or from other sources of taxation, from all Units alike, *and not from the Provinces alone; and, in that case, the States as well as the Provinces would be equally contributing to meet that deficit.*

With regard to the tributes, I do admit that tributes of a feudal nature cannot exist in a Federation; but the Federal Government might require more money to meet its expenditure, and in that case, if the States are not prepared to allow the Federal Authority to levy Income-tax, then they must be prepared to contribute to the Federal Exchequer on a certain principle to be fixed. *In that case, all States alike will be making cash contributions to the Federal Exchequer which will not be in the nature of tributes.*

The question of ceded territories, I am afraid, should not be gone into and should not have been raised, because I feel that, if we go into the question of ceded territories or annexed territories or new States created, I do not know where we shall land ourselves.

With regard to the maintenance of State Forces, the forces at present also are maintained at the option of the States, and these forces should not necessarily be maintained in future. No account can therefore be taken of such Forces for purposes of Federal finance. I believe, and I am firmly of the opinion, that the entire Forces and Army in India as a whole should be directly under the Federal Military Authority.

With regard to paragraph 20, Maritime States and Kashmir, I realise that these States have been enjoying certain privileges. For example, the subjects of Maritime States have not been paying any Customs duties, and the same is true of Kashmir. But if any compensation is to be paid to these States for the privileges which they have been enjoying, then some means will have to be found so that they may bear their share of the burdens which every Unit of the Federation must bear for the Federal expenditure.

With regard to emergency powers, I agree with Lord Lothian that contributions from the Provinces will not meet the emergency. In fact, if the contributions have to be exacted by the Federal Authority such contributions may be objected to by some Provinces and Units from various points of view; and, instead of helping the Federal Government in that situation, the crisis will be aggravated. In grave emergencies and financial crises, the Government should have full power, not only in exacting contributions, but in levying any tax, which should be equally levied on States and Provinces.

With regard to borrowing powers, as set out in paragraph 22, I welcome the sub-Committee's suggestion that Provinces should not be allowed to borrow abroad; but certainly there ought to be some freedom for the Provinces to borrow internally in India on the security of their own revenues. But there should be a restricted control by the Federal Government over the time at which Provinces should issue their loans so as to prevent any interference with other issues, Federal or Provincial. A Federal Loans Board should be constituted, and its composition and function should be left to the Expert Committee for determination.

Coming to the last matter, the question of a Statutory Authority for Railways and possibly for Posts and Telegraphs, I do not agree with the recommendations of the sub-Committee. Last time, when we were discussing the draft Report of the Federal Committee, this subject of a Statutory Railway Authority was brought to our notice for the first time. We had no opportunity of fully discussing it. It was pointed out by some of us that it was not advisable to remove the Railways and similar commercial concerns from the purview of the Legislature. But even if it is found necessary that, in the interests of better administration, some sort of Statutory Authority is needed, this should be left entirely to the future Federal Government, and the future Federal Government's hands should not be tied at this moment. That is all I have to say on the subject.

Pandit M. M. Malaviya: Lord Chancellor, At the close of their Hydari, Sir Maneckjee Dadabhoy and Dr. Shafa'at Ahmad Khan appointment of which they recommend, the sub-Committee say, that it will, in their view, have a most important rôle to play, and they anticipate that its work may be so important, and the subjects with which it will have to deal so numerous, that it may be necessary to appoint two Committées, possibly more—the first to deal with a general survey of the problem and an examination of the questions dealt with in paragraphs 5 to 17 and 21 to 25 of the Report, and the second to conduct an enquiry relating mainly to the States, which, they say, might require considerable historical research.

The discussions that have taken place have shown that Sir Akbar Hydari, Sir Maneckjee Dadabhoy and Dr. Shafa'at Ahmad Khan strongly support the recommendation for the appointment of this Expert Committee. It has therefore to be considered whether such an Expert Committee is wanted. On the other side, you have the view presented by Mahatma Gandhi, that the object for which the sub-Committee was appointed was to report upon the general principles upon which the financial resources and obligations of India should be apportioned between the Federation, the British Indian Units jointly and severally, and the States Units. In view of the discussion which was raised, Mahatma Gandhi suggested that the general principles which had been agreed to by the sub-Committee might be accepted, and that whatever more required to be considered immediately might be considered by the sub-Committee, to which the matter might be referred back. The object was that principles, with regard to which there was general agreement, should be

adopted as the basis of the constitution which we are to frame, and that matters of detail should be postponed to a future date. That date, as Mahatma Gandhi pointed out, would be when the new Government of India had been constituted, because matters of detail could best be examined then. The Government would know what further principles required elucidation, what further recommendations were wanted for taxation of new kinds, and so on.

In this conflict of views, I desire to draw the attention of the Committee to the actual recommendations of the sub-Committee, because that, I submit, is the best way of examining whether the recommendation for the appointment of an Expert Committee is one which this Committee should accept.

In paragraph 4, the sub-Committee make the basic recommendation that:

> "Any theoretical scheme for the division of resources and obligations should, before being embodied in the constitution, be put to the test of a careful examination of its probable results by some body which is fully equipped for the task. We accordingly recommend that, with the least possible delay after the conclusion of the present Session of this Conference, an Expert Committee should be constituted for the purpose of working out in detail a financial scheme for the Federation, taking as its starting-point the general proposals contained in our Report."

Now, My Lord, let us take the recommendations under each head. I find, for instance, that they recommend that there should be a considerable degree of elasticity in the financial framework, and that amendments of the constitution, in order to achieve this, should not be so hedged with difficulties as to be almost impracticable. I take it there will be general agreement in this Committee on this principle; I do not think anyone will object to it.

Then the sub-Committee go on to say that—

> "It is undesirable to disturb the existing distribution of resources between the various governments in India, unless . . . . . there are imperative reasons for making a change."

I take it that that also will be agreed to.

The third recommendation is as follows:—

> "that, at all events to begin with, the Federation and its constituent Units are likely to require all their present resources (and, indeed, to need fresh sources of revenue); so that, on the whole, it is improbable that any considerable head of revenue could be surrendered initially by any of the governments without the acquisition of alternative resources."

I do not think there will be any objection to that, either.

Another recommendation says that "Central" subjects should, as far as possible, be eliminated. This is a matter for consideration here. I do not know whether the Expert Committee can pronounce any particular opinion on that subject. Then one of the points proposed to be referred to the Expert Committee is that they should investigate the allocation of "Central" civil pension charges between Federal and "Central". That certainly does not call for much difference of opinion. That is a matter for the experts which can be taken up later on and settled. It is not a thing which is going to be embodied in the constitution. That is the test which I wish the Committee to apply to the recommendations for the work which is to be entrusted to the Expert Committee.

Another recommendation of the sub-Committee is that if all the obligations of the Federal Government are covered by assets to be transferred to the Federation, the whole of the pre-Federation debt should be taken over by the Federal Government; and the recommendation about the Expert Committee is that the Expert Committee is to investigate whether the obligations are covered by the assets, and, if not, to fix the proportion of the pre-Federation debt to be classed as "Central". If they are not covered by the assets, that would be a matter for consideration; but the recommendation that—

> "If it were found . . . . that all the obligations were covered by assets to be transferred to the Federation, the whole of the pre-Federation debt should be taken over by the Federal Government."

is one to which no exception can be taken, and this principle can be adopted now.

I take another recommendation by way of illustration. Central charges, if any, should be—

> "a first charge against the Income-tax collected solely from the British India Provinces, and against any other revenue collected by the Federal Government, but derived solely from British India."

I do not know that the Expert Committee need pronounce any opinion on that matter. This is a matter more for the Government and the States and the Provinces to consider and decide, rather than for an Expert Committee to pronounce an opinion upon..

There is a suggestion, in regard to the matter of the Corporation tax, that the Corporation tax should be classed as Federal; but it is coupled with the very wise clause that, if the States will agree to the principle, the Federal system of taxation should not be dependent entirely upon "indirect taxes". As it is put in the sub-Committee's Report it is:—

> "As regards the Corporation tax (now called the Super-tax on Companies), however, we suggest that, if the necessity of such a reinforcement of Federal revenues is established, this tax should be included in the list of Federal taxes; and we hope that the States will agree to this principle,"

but it is added:—

> "If federalisation of the Corporation taxe were not accepted by the States, it would continue to be treated as a British India source of revenue."

The recommendation of the sub-Committee is clear. That does not require any exploration by the Expert Committee. It is also suggested that the Expert Committee should determine, with reference to the actual budgetary position, whether any reinforcement of Federal revenues by means of allocation of Corporation tax to the Federal Government is necessary. I am certain that, even if such an investigation were made, its result is not going to be incorporated in the constitution. It is to be made with reference to the actual budgetary position, but of what year? Is it to be the budgetary *position of the present year?* Will it be the *same next* year? Is it likely to be the same the third year? The budgetary position changes year by year; and what on earth is to be the recommendation of the Expert Committee which, it is said, should determine, with reference to the actual budgetary position, whether any *reinforcement of* Federal revenues, by *allocation of Corporation* tax to the Federal Government, is necessary? I am sure it will be recognised that it would not be fair to impose such a task upon any Expert Committee.

Sir Maneckjee Dadabhoy: It is the average budgetary position. I quite agree with you that the Budget would differ every year, and that one year's figures would not tally with another year's figures.

Pandit M. M. Malaviya: The average of what years, Sir Maneckjee?

Sir Maneckjee Dadabhoy: The average of a few years.

Pandit M. M. Malaviya: What particular period would you take?

Sir Maneckjee Dadabhoy: Take the last three years.

Pandit M. M. Malaviya: And under the new system or under the existing system?

Sir Maneckjee Dadabhoy: Well, of course, the new system is not in operation yet.

Pandit M. M. Malaviya: Well, who will venture to look into the future and prophesy what the budgetary arrangements two or three years hence will be in the Government of India; what reductions of expenditure it will bring about; what sources of revenue it will abandon; what new sources of revenue it will adopt? I am sure that no man with any practical knowledge of finance would seriously put forward the suggestion that the average Budget of any particular period of years should be adopted as the basis of such an enquiry, especially nowadays. We do not know where the budgetary position will stand next year and the year afterwards, and so on. I submit, *therefore, that this recommendation, that* the Expert Committee should determine, with reference to the

actual budgetary position, whether any reinforcement of Federal revenue by means of allocation of Corporation tax to the Federal Government is necessary, is an impossible proposition.

With regard to the list of the classification of revenues as Federal and Provincial, it is suggested that—

> "these lists should be examined by the Expert Committee, not only in order to review them generally, but also to expand and particularise them, and to include in them all sources of taxation at present used in British India or under contemplation."

My Lord, I do not think that a proposition like this can be seriously considered. The classification of the list, so far as it has been made now, is clear. We might suggest some additions. We might suggest some alterations. But where is the need for an Expert Committee to revise these lists, to review them generally, to expand and particularise them, and to include in them all sources of taxation at present used in British India or under contemplation? The Government of India appointed a Taxation Enquiry Committee some years ago. That Committee has made recommendations as to possible sources of taxation. When the new Government of India is constituted it will be its privilege, as its duty, to consider what sources of taxation might be adopted, and which might be dropped. I do not think that any Expert Committee can, at present, usefully pronounce an opinion on this matter. Most certainly I venture to say that Parliament would not think of embodying a recommendation like that, if ever made, into the constitution.

Then, My Lord, Contributions from Provinces, if there should be a substantial Federal deficit, have been recommended; but it is added that the Expert Committee should determine the most appropriate basis on which such contributions are to be made. At what period will the Expert Committee sit and work, and upon what state of affairs will it base its judgment. Are we to assume that a substantial Federal deficit has occurred, and is the Expert Committee to proceed on that basis without being able to determine the measure of that Federal deficit? Will the Committee require to know the financial positions of the Provinces, and in what straits they may be at the moment? The word used in more than one place is "determine". The Expert Committee, therefore, is vested with greater power than Expert Committees are usually given. One would think that the Federal Government and the Provincial Governments would have their representatives meet together to weigh the entire situation, and, in view of the situation existing at the time at which a contribution might be required, would decide what contributions, if any, should be made.

As regards contributions from the States, it is said that the Expert Committee is to examine the whole question of cash contributions from States and ceded territories and pronounce an opinion as to the equities in each individual case. The recommendation of

the sub-Committee is clear. They have recommended, as regards cash contributions, that there is—

> "generally speaking, no place for contributions of a feudal nature under the new Federal Constitution; and only the probability of a lack of Federal resources at the outset prevents our recommending their immediate abolition."

I submit that we should accept the recommendation and decide that they should be abolished forthwith. These contributions have been described as tributes. Tributes cannot exist in a free India, in which the relations of the States and the Federal Government will be determined, not under circumstances similar to those which existed when Treaties were entered into between the States and the East India Company, but under happier conditions, when the States will be actual participators in the Government of India as a whole. There can be no question under the new system of any cash contribution made by any State, howsoever humble it may be; and no Expert Committee is needed to determine the question of cash contributions from States.

The sub-Committee also states that it has been unable to investigate in detail the claim of the States that, through having ceded territory, some of them will be liquidating a liability in respect of Federal burdens; and it proposes that the Expert Committee should examine the whole question and pronounce an opinion as to the equities in each individual case. I know that discussions relating to contributions and ceded territories have been going on for some time past between the Government and some of the States. They have not been easy of solution. Is this Expert Committee to give us a solution of each individual case and, if so, within what period? Hitherto the Government of India have appointed representatives, and the States have appointed their representatives, and many such questions have been solved by discussions between them. How is this Expert Committee to pronounce an opinion within a few months on the equities of each individual case; and is that to be embodied in the constitution?

Then I find that the question whether "Narcotics" should, for the purposes of taxation, include Tobacco, has been left open. Do we require it to be examined by an Expert Committee? What expert knowledge is required to examine whether Commercial Stamps should be federalised or not? A commercial opinion may be expressed, but I do not see that you want to set up an Expert Committee to examine the question. Further, My Lord, there is a proposal regarding Terminal taxes, as to whether there should be any; and it is recommended that the Expert Committee should examine the possible objections raised to these taxes and suggested conditions subject to which the imposition of these taxes might be permitted. Is this Expert Committee to take over the function of the future Government of India and the future Legislature of the country on such questions? Whether these taxes should be permitted or not is a matter which has to be decided by the representatives of the people, who will be assembled in the Legislature.

Why should such an Expert Committee be troubled with such a matter?

Another of the recommendations says that no form of taxation should be levied by any Unit of the Federation on the property of the Federal Government; and then the sub-Committee go on to say:—

> "The precise form in which this principle should be expressed should be examined by the Expert Committee."

The principle is that no form of taxation should be levied by any Unit of the Federation on the property of the Federal Government. I should think that is clear enough. I do not see why the possible precise form in which this principle should be expressed requires to be examined by an Expert Committee.

Another recommendation which the sub-Committee have made is this. They say:—

> "It should, we think, be open to the Federal Government, with the assent of the Federal Legislature, not only to make grants to Provinces and States for specified purposes, but also, in the event of its ultimately finding that Federal revenues yield an apparently permanent surplus, to be free, as a possible alternative to reduction of taxation, to allocate the surplus proceeds to the constituent Units of the Federation, both States and British Indian Provinces."

That is the general recommendation. The special recommendation is that the proportions in which the funds which may be available should be divided among the Units—whether according to their respective revenues, or to population, or to some other criterion—should be determined by the Expert Committee. Now, My Lord, we do not know when such a situation will arise when there will be funds available for distribution; but when such funds are available for distribution, will not the Federal Government be able to settle the matter itself after correspondence with the Provincial Governments and the States? I do not see how any experts will be able to picture to themselves the conditions which may be present at any particular period of time—the respective financial positions of the various Provincial Units and States which may be concerned in the matter—so as to be able to suggest according to what rule—"whether according to their respective revenues, or to population, or to some other criterion"—the division of the funds should take place.

Another recommendation is that the proceeds of taxes on Income, after the deduction of "Central" charges, if any, should be redistributed to the Provinces, but that such taxes should still be collected from the whole of British India by one centralised administrative service. The recommendation with regard to the Expert Committee is that the principles on which the proceeds of the Income-tax should be so distributed should be considered by the Expert Committee. What is the future Government of India to do? All these functions might very well be left to the Govern-

ment of India—the Federal Government, that is—to settle. The principles on which the proceeds of the Income-tax should be re-distributed, it is said, should be considered by the Expert Committee, which, it is recommended, should also consider the question of uniformity of rate. A great deal of knowledge will be required of the Provinces and of the States of India generally, of the conditions of the people in different parts of the country and of the average income of the people, before any such question could be fairly decided. I submit that no Expert Committee is needed to deal with this question beforehand.

Another recommendation is, however, that the proposed Expert Committee should include in its enquiry the question of the possibility of empowering the Provinces to raise a tax on agricultural incomes. My Lord, the possibility of raising a tax on agricultural incomes has been much discussed in the past. I do not think that any Expert Committee which may be appointed will be able to add very much to the general knowledge on the subject. Is it meant that it should go beyond that, and that its recommendations should be accepted, supposing it to recommend that a tax should be raised on agricultural incomes? If that is so, it will be trespassing on the functions of the Government of the country.

Then there is a recommendation that Provincial borrowings and Federal borrowings should be co-ordinated as far as possible, and it is recommended that the Expert Committee should consider whether this should be done by the constitution of a Federal Loans Board or Council, "consisting of representatives of the Federal Government and of the constituent Units." I do not know that that will be required to be incorporated in the constitution.

I think I have drawn attention sufficiently—

Chairman: to a number of points for which you say you really do not want an Expert Committee.

Pandit M. M. Malaviya: Yes. In view of these, I do not think there is any work needed to be done by an Expert Committee. These are matters mostly to be settled by the representatives of the Government and of the Provinces, or they are matters which will be settled by experts whom the Government of the future may appoint on certain questions. These are certainly not matters for which an Expert Committee should be appointed at this stage, and which would require six months time in which to do its work.

With regard to the question of the two parts of the enquiry, the first is to be a general survey of the problem. I submit that the sub-Committee's Report has made a general survey of the problem, and has made its recommendations on that survey; but it is recommended that—

> "the principal object of the first enquiry would be a general survey of the problem and an examination of the questions dealt with in paragraphs 5 to 17 and 21 to 25 of our Report."

I fail to see, My Lord, where is the need for an Expert Committee to deal with the problems which have been considered and reported

upon by the sub-Committee which was presided over by so experienced a Parliamentarian as Lord Peel, and which had on it such representatives of Indian States as Sir Akbar Hydari, Sir Mirza Ismail, Colonel Haksar, and other gentlemen who are familiar with the questions of the finances of the different States and of the financial relations of the Government of India with the States. I submit, therefore, that there is no occasion to appoint such a Committee for what has been described as the first enquiry.

As regards the second enquiry, which is to relate mainly to the States, it is said that it would require considerable historical research. My Lord, if it will require considerable historical research, I fail to see what result it will produce which will require to be embodied in the constitution. It may require considerable historical research, although I do not know. The Butler Committee went into the question of the States and their relations with the Government of India. The representatives of the States have been busy with this question for a long time, and I believe that in the Secretariat of the Chamber of Princes they have got very valuable information on these questions which perhaps it would be difficult for any Expert Committee to collect without their help.

It seems to me, therefore, that the general recommendations of this sub-Committee should be accepted. This is what Mahatma Gandhi suggested yesterday. The object of his suggestion was that, if it was felt that there was any difficulty in adopting the general principles, then the matter might be referred to the sub-Committee for a further Report; but only if no such difficulty is felt—and I think none should be felt, in view of the recommendations which have been made. I have not heard any objection taken to any particular recommendation, or any strong objection raised; and if there is such an objection, it can be disposed of here. But most certainly I fail to see any reason why we should be hampered by any proposal for the appointment of such a Committee. I therefore recommend that the general principles recommended by the sub-Committee should be adopted. I also recommend that the clause in the fourth paragraph of the Report, that—

> "Any theoretical scheme for the division of resources and obligations should, before being embodied in the constitution, be put to the test of a careful examination of its probable results by somebody which is fully equipped for the task,"

and the recommendation for the appointment of the Expert Committee, should not be accepted. If we are agreed on these two points, the work of this Committee can go forward.

My Lord, I cannot contemplate with equanimity a long postponement of the question of the framing of the constitution for the future Government of India. Unless there is a reason to the contrary which will commend itself to the members of the Conference generally, the sooner we come to a decision as to what the constitution is to be the better will it be for all interests concerned. I therefore request the Committee to examine this proposal closely.

If, as I have submitted, the Committee are satisfied that, speaking generally, none *of the matters recommended to be entrusted to the* enquiry by an Expert Committee is such as should stand in the way of proceeding with the work of the constitution, we should come to a unanimous conclusion on that point. I am sure, from what Their Highnesses The Maharaja of Bikaner and the Nawab Sahib of Bhopal have said, and from what Sir Akbar Hydari has said, and from what other representatives have said, that it is clear that the States *do not want that there should be any delay in framing* the constitution of the future Government of India; and if the States are agreed that these principles are generally acceptable *to them, then I submit that we should decide to adopt them,* and to proceed with the work of framing the constitution.

Lord Peel: Lord Chancellor, I do not wish at this stage to reply generally to all the criticisms that have been made by different members of the Committee *I merely want to make one suggestion* about an alteration in the draft of the Report. I have not had the opportunity of submitting it to the sub-Committee, but I should like to mention it at this stage only as a suggestion, as a mere suggestion, in order possibly to remove some misconception that has arisen as to the scope of the Expert Committee. I should like to do it at this stage because members who speak subsequently might perhaps have an opportunity of expressing their opinion upon it. I think there has been, in the minds of some speakers listening to the debate, some slight misunderstanding as to the *actual intention of the sub-Committee in the proposal, or in the* scope of the proposal, which they have put forward as to the Expert Committee. I should like to call their attention, if I may, to certain words in paragraph *4, at the end of the first paragraph.* If reads thus:—

> "The Expert Committee must have for its guidance some general principles of the kind set out below; but it should *be free to make alternative suggestions if, on closer examination* of the facts, a probability is disclosed that any general principle laid down by us would, in practice, prove un*workable.*"

I think that has been to some extent interpreted by some of the speakers as—I will not say, a general invitation, but—a sort of permission to this Committee really to examine all these general principles and possibly substitute fresh ones, and in fact throw into the melting pot the whole scheme, or nearly the whole of it, proposed by the Finance sub-Committee. Of course it was not intended to do that. We only wanted a certain liberty to the *Expert Committee to make alternative suggestions in certain cases* if they found that, in practice, examining carefully the application of a particular principle, the application of that principle might *prove to be unworkable. It is possible that the Report in that* respect was framed in rather too general a language, and I was going to make the following suggestion. After the words "the Expert Committee must have for its guidance some general prin-

ciples of the kind set out below," I propose to substitute the following in place of the next three lines in the Report:—

> "If the Expert Committee finds, on closer examination of the facts, that any general principle laid down in our Report would, in practice, prove unworkable, it will of course, be open to it to indicate by what means, in its opinion, the difficulty may be overcome."

That, I think, would have a limiting effect upon the operations of the Committee; and I think it would make clearer, if not quite clear, what was the intention of the sub-Committee, that this departure from the general principles laid down for the guidance of the Expert Committee should only be made in certain specific cases. I throw out the words I have just read for the consideration of the Committee.

Sir Maneckjee Dadabhoy: We are prepared to accept that on this side.

Sir Akbar Hydari: It was represented that perhaps there might be some difficulty in that respect.

Pandit M. M. Malaviya: I am opposed to the recommendation for the appointment of the Expert Committee now. I think it should be left to be appointed by the future Government of India.

Lord Peel: I may perhaps deal with that later. At this stage I only wanted to put forward those words.

Diwan Bahadur Mudaliyar: As I have listened to the debate during the last three days, I think it is perfectly clear that, on the general principles laid down by the sub-Committee, there has been a very fair agreement on all sides of the Committee. One question which loomed large during the last few days is that of the composition, the appointment and the functions of the Expert Committee. I think the intervention of Lord Peel a few minutes ago has considerably eased the position with reference to the Expert Committee as far as I am concerned.

I should like first to deal with the suggestion for the appointment of an Expert Committee and try to point out what exactly is the difficulty that some of us feel in accepting that recommendation in the form in which it was first presented in the Report of the sub-Committee. Two Committees are in fact contemplated by that Report. There is an Expert Committee which would deal with the general principles which have been laid down by the Federal Finance sub-Committee, and there is a second Expert Committee which would deal with questions relating to individual States and adjustments with individual States.

Let me take, first of all, the first—and, if I may say so, the more important—Expert Committee, and try to analyse what are the difficulties some of us feel in the way of the appointment of an Expert Committee and in the way of the acceptance of its recommendations. The reason why that Expert Committee and the need for its appointment have been canvassed so largely is merely

this. At what stage are the conclusions of that Expert Committee to be implemented? Are they to be implemented in the constitution we are going to draft? Is the draft Bill, which we all hope will emerge as a result of the discussions at this Round Table Conference, going to be held up and the Parliamentary procedure thereon going to be delayed until the Expert Committee has reported? What would be the implications of that suggestion? After the Expert Committee has reported, a third Round Table Conference would be inevitable. The general principles would still have to be agreed upon by the States *en masse*, if I may say so, and by the British Indian Provinces *en masse*. It is not a question of adjustment with any single State, but the position of the entire body of States depends upon the result of that expert investigation. If that is the position then it is obvious that there cannot emerge a draft Bill at the conclusion of the sittings of this present Session of the Round Table Conference. Whether the next Session is held in England or India is another matter; but it is quite clear that the draft Bill which we hoped would emerge out of the deliberations of this Conference, and the legislation which will pass through Parliament as a result of it, would be held up.

There has been a great deal of talk about the completed picture. Sir Samuel Hoare used the phrase on the last occasion, and many of us gave our assent to the idea that a complete picture should be seen before we were committed to the proposal of a Federation. It seems to me, however, that the complete picture should be regarded as the picture from the point of view of the British Indian Provinces and the Indian States as a whole, and not from the point of view of every single individual State. We would like to have the agreement of the States *en masse* as regards any principles of taxation and any allocation of sources of revenue to the Federal Government and the Units. That is why we suggest that the appointment of a Committee to consider the allocation of these sources of revenue and to frame proposals with reference to them would delay the draft Bill, would delay the constitution, and would therefore endanger the Federation. It is not possible to think of the consequences of further delay before we are committed to the draft Bill embodying the Federation. The draft Bill will be the completed picture, in my opinion, to which the States *en masse* will agree and to which the British Indian Provinces *en masse* will agree.

Chairman: Would you mind telling me just what you envisage when you speak of the draft Bill?

Diwan Bahadur Mudaliyar: On this particular question, I should like to confine myself at the present moment to finance, because we are dealing with finance. In the draft Bill there will be provision for sources of revenue for the Federal Government and for sources of revenue for the Provincial Governments.

Chairman: To what Bill are you referring?

Diwan Bahadur Mudaliyar: To the draft Bill which will pass through your Houses of Parliament. We have taken it for granted

that, at the conclusion of our deliberations, draughtsmen will draft a Bill to pass through your two Houses of Parliament. That draft Bill, in my opinion, should represent the completed picture to which the States, generally speaking, have given their adherence, and British India, generally speaking, has given its adherence.

Chairman: You speak of the decisions of this Committee, and I should like to know when they are coming!

Diwan Bahadur Mudaliyar: Taking the question of finance, My Lord, the Federal Finance sub-Committee has submitted a unanimous Report, in which certain principles have been laid down. It may be that, on further consideration, some of these principles may have to be modified. All that I would suggest is that these principles, if acceptable to the whole Committee, will become the decisions of this Conference and will be embodied in the draft Bill.

Chairman: Are we to have a Bill by piece-meal, or only a Bill for this particular thing?

Diwan Bahadur Mudaliyar: This will be one of the clauses in the new constitution. If we can complete each chapter as we proceed, ultimately the draft Bill will complete itself.

Chairman: Have you envisaged the number of chapters?

Diwan Bahadur Mudaliyar: I cannot immediately say what the number of chapters will be, but I can certainly give some of the details of the various chapters.

Chairman: I should be most grateful if you would, for example, tell us the first chapter. What, in your opinion, would be the first chapter?

Diwan Bahadur Mudaliyar: The first chapter would be the composition of the Federation. The Federation will consist of the Indian States and British Indian Provinces—such Indian States as will enter the Federation, and all British Indian Provinces without exception.

Chairman: The first part would be a chapter dealing with the Indian Federation?

Diwan Bahadur Mudaliyar: Yes.

Chairman: What is the second chapter?

Diwan Bahadur Mudaliyar: The second chapter will deal with the composition of the Federal Parliament.

Chairman: I have that down as the third chapter. The first chapter is "Indian Federation." Let us say the second chapter is "The Federal Legislature." What is the third chapter?

Diwan Bahadur Mudaliyar: The third chapter will relate to the Federal Government.

Chairman: I have got it "Federal Executive." Is that right?

Diwan Bahadur Mudaliyar: Yes.

Chairman: Shall we put it in this way: Chapter I, the Indian Federation; Chapter II, the Federal Executive; Chapter III, the Federal Legislature?

Diwan Bahadur Mudaliyar: Yes.

Sir Muhammad Shafi: Before Chapter I, the Indian Federation, there ought to be some definitions. Where will these come?

Chairman: I have thought of that. I do not say I have tossed up for it; but in some Acts they come at the beginning and in other Acts they come at the end. I have got mine at the end. What do you think the next chapter should be, Mr. Mudaliyar?

Diwan Bahadur Mudaliyar: The powers of the Federal Legislature.

Chairman: I have got it "Provincial Executive. Provincial Legislature."

Diwan Bahadur Mudaliyar. I thought we would come to Provincial after we had finished with the Central.

Chairman: What do you say the next one is?

Diwan Bahadur Mudaliyar: The powers of the Federal Government—the Federal Executive.

Chairman: I have got that. Would you accept "Relations between the Federal Government and the Federal Units?"

Diwan Bahadur Mudaliyar: Yes.

Chairman: I have got that down as V. What about the next one? I have got "Financial Provisions" down. Is that right?

Diwan Bahadur Mudaliyar: Yes, a chapter on Taxation and Finance.

Chairman: I do not want to go very much further. I have got No VII down as "Judicature." Will that meet with your approval?

Diwan Bahadur Mudaliyar: Yes.

Chairman: That is the Federal Court which we are going to discuss to-morrow. Could you kindly tell me this. We have nearly settled these financial provisions, and I shall not have any difficulty there; but what about the Federal Executive?

Diwan Bahadur Mudaliyar: I do not understand Your Lordship.

Chairman: When we have got agreement on all those, we shall be prepared to draft the Bill?

Diwan Bahadur Mudaliyar: Yes.

Chairman: I am sorry to interrupt you, but you were just touching *on the very vital point of the question, because we are really now getting to something being done, and I hope to finish* these financial *provisions,* and I *hope to* finish the judicature very soon. I have got one or two other things down—Public Services, the Secretary of State, Machinery for Constitutional Amendments, and so on, but I will not trouble you with those now. I am so sorry to interrupt you, but when you said this I was only thinking whether you wanted to have seven or eight Acts of Parliament, one dealing with Finance only; but we must get them all, must we not?

Diwan Bahadur Mudaliyar: We must, My Lord. My difficulty in accepting this is that it would involve seven or eight Acts of Parliament; but I want it all in one Act of Parliament, and that as soon as possible. The difficulties will have to be faced later. For instance, if we accept the general principles as laid down by the sub-Committee—and I am perfectly prepared to accept them all—and supposing an Expert Committee were to find out that some principle was to come later, that could be treated later as a Constitutional Amendment in a new Act. I am only throwing out the bare suggestion. The point is this, that an Act is a place where provisions can be embodied so that no State or Province need be under any apprehension or any fear that some other system of finance than that to which they were consenting parties will be imposed on them after they have come into the Federation.

Chairman: Who is to decide upon Constitutional Amendments—the new Federal Government or the British Parliament?

Diwan Bahadur Mudaliyar: The actual passage of the Constitutional Amendment will be part of the powers of the Federal Legislature. It may be hemmed in by conditions, no doubt.

Chairman: What sort of conditions? Have you thought about that? I have a list of the conditions. I was only wondering if yours were the same as mine. What sort of thing, for example, would you put it out of the power of the Federal Government to amend its constitution upon? Do not let me embarrass you now, because it is very important that we should not make suggestions, so to speak, in a hurry, which afterwards we might perhaps want to vary a little; but you will think, will you not, as to what powers should be given to the Indian Legislature to amend its own constitution? You would not have any power to amend anything in the constitution which went to the protection of minorities, for instance?

Diwan Bahadur Mudaliyar: I believe on the last occasion also we dealt, though I think very lightly, with the question of Safeguards; and questions relating to minorities would not be within the purview of the Federal Legislature to amend in the constitution. The particular matter which I was thinking of was this. An Expert Committee might find later, after investigation, that we had made some fundamental mistake in the principles which we have embodied in the constitution. That might be rectified by Constitutional Amendment. I am only putting it forward as an extreme position.

Sir Maneckjee Dadabhoy: We shall have to consider this at a later stage. It is a very important matter, it is a very significant matter, and I at least am not prepared to agree to the suggestion to take away the power of the Crown in this matter. The minorities will certainly not agree to any suggestion.

Sir Muhammad Shafi: I do not think we need express any opinion at this stage. When we have the matter before us, we shall then be able to consider it and deal with it.

Diwan Bahadur Mudaliyar: I was only on this particular question of finance, and as a matter of fact the sub-Committee have gone a little further than I am prepared to do when they say, at the end of page 3 and the beginning of page 4—

> "Whatever success in attaining this object can be achieved, we still consider it important that the Conference, when considering the question of constituent powers, should be specially careful to ensure that amendment of the constitution in this respect is not so hedged with difficulties as to be almost impracticable."

Sir Maneckjee Dadabhoy: That is only the financial part.

Diwan Bahadur Mudaliyar: I was dealing only with the financial part.

Sir Maneckjee Dadabhoy: But we were drifting into the other bigger question.

Diwan Bahadur Mudaliyar: I was careful to say that the question of minorities should be outside the province of Constitutional Amendments.

Now, My Lord, this Expert Committee cannot hold up the passage of the Bill in Parliament. That is my whole point. We have come to some conclusions here and now on general principles. In this regard I accept what Mahatma Gandhi has said, and that is how I interpret the intentions behind that suggestion. If we accept the view that the sub-Committee has laid down sufficient principles to be embodied in the constitution, no reference back to the sub-Committee is necessary; but if there is a feeling that things might be thrashed out further, let us go back to the sub-Committee, and obtain another unanimous Report, as I am certain we should have, considering the experience and ability of many of the members of that sub-Committee. Then we will accept that as the basis of the draft Bill.

Chairman: You mean, as the basis of that part of the draft Bill?

Diwan Bahadur Mudaliyar: As a part of the draft Bill. With reference to the second Committee, the position is entirely different. That Committee will deal with the relations of individual States and their adjustments. I envisage two possibilities with reference to that. This sub-Committee's Report has laid down that the present position must be maintained until, by agreement, it can be changed. Every individual State knows its present position, whether a Maritime State, or the State of Kashmir, or any other. The *status quo* will be maintained unless and until, by agreement between the Federal Government on the one hand and individual States on the other, it can be altered. There can, therefore, be no difficulty on the basis of the present status of individual States, whatever their problems may be, in taking the picture of the final Act of Parliament as a complete picture and coming in. The expert investigation by the second Committee will go on, and in case any individual State wants to reopen the question of its status after the Report is

published, the Federal Government and the individual State will come to an agreement on that and will alter the status to the satisfaction of both parties. That is the first position that I would take up.

Sir Maneckjee Dadabhoy: I should like to ask one question. The speaker has just said that this draft Bill will be a picture for all of us to consider. I want to know, once the Bill is placed before Parliament, what jurisdiction we Indians will have over this Bill. What power shall we have over that Bill to suggest any alteration or modification of its provisions?

Chairman: What jurisdiction do you suggest that you should have?

Sir Maneckjee Dadabhoy: Not jurisdiction, control.

Chairman: Well, what control do you suggest? I simply want to know as a member of the Government responsible.

Sir Maneckjee Dadabhoy: Suppose that some section or minority says, "We do not agree with some part of that picture," once you introduce that draft Bill, how can we help ourselves?

Chairman: What do you expect us to do then?

Sir Maneckjee Dadabhoy: We must know the picture before it goes to the House of Commons.

Sir Tej Bahadur Sapru: Suppose the House of Commons, during the passage of the Bill, wants to alter or modify it?

Sir Maneckjee Dadabhoy: That does not affect us.

Sir Tej Bahadur Sapru: The Houses of Parliament can alter the Bill as it has been agreed, and surely that affects India?

Sir Maneckjee Dadabhoy: That is why I want it to be carefully considered by each Unit before it goes to Parliament.

Chairman: You mean to say that we are to circulate the Bill to each Unit?

Sir Maneckjee Dadabhoy: We need not circulate it, but the Conference will know at least what the Bill is.

Sir Tej Bahadur Sapru: Which Conference?

Sir Maneckjee Dadabhoy: I mean, when the Bill is drafted we may be in existence; we may be in session. We must have at least the picture before us.

Diwan Bahadur Mudaliyar: My Lord, every member of the Conference knows that there is a distinction between the British Indian Provinces and the Indian States. For one thing, the British Indian Provinces are all represented; for another, what the British Indian Delegates on this side all agree to will be binding so far as all the British Provinces are concerned without exception. So far as the Federation is concerned, States may come in or keep out, but the British Indian Provinces all come in without exception. If my friend realises this vital distinction, and that no individual Ruler and no Delegate on the States side can bind any individual

State, but can only give us the opinion of the States *en masse*, then the position is quite clear. Individual States will have liberty to come into the Federation even after the Act is passed, but the British Indian Provinces will come in immediately the Act is passed, subject to the reservations which are made in the Act as to when Federation should start to work.

I was suggesting we should take the position of the individual States with reference to their difficulties, with reference to those things which need adjustment and those things which the Federal Government will have to yield before they come in. As I said, if the *status quo* is maintained and the constitution emerges out of Parliament, there will be sufficient picture for them to come in immediately. The alteration of the *status quo* will be a matter of negotiation after the results of an expert investigation, if you will, between the Federal Government on the one hand and the individual State on the other. To that extent I agree with what our distinguished colleague, Sir Tej Bahadur Sapru, said yesterday, that in these matters of the alteration of the status of individual States, the procedure must be by negotiation with the Federal Government, which must bear the brunt of the alteration of status.

The second basis is a more extreme one. I am prepared as a last resort to concede that individual States will hold out from the Federation and not come in even on the basis of the present status until their individual claims are satisfactorily settled. I am even prepared to go so far as that; but I say that the picture, so far as the States *en masse* are concerned, must be completed as soon as this Round Table Conference can finish its work and when the Bill is to be presented to the House of Commons. An expert investigation which delayed matters and necessitated a further Round Table Conference would certainly be out of the question, I submit, and is not envisaged, I venture to suggest, by any member of the Federal Finance sub-Committee or by any representative of the Indian States.

Chairman: Are you in effect, then, saying that decisions by this Committee, or by the Round Table Conference, are a condition precedent to a Bill?

Diwan Bahadur Mudaliyar: I always understood that that was the case. The maximum amount of agreement at which this Conference arrives on various questions will be, as I understand the position, the basis of the Bill and will in fact form part of the draft Bill; and that is the completed picture—since there has been so much talk about it—that I envisage before the Federation can be said to have started.

And now, My Lord, I do not think I need say anything on the merits of the Report of the sub-Committee. As I have said, the general principles have all been accepted; and I do not see any difficulty at all in having unanimity on those general principles—such unanimity and such general principles as will enable the draughtsmen to embody them in the constitution.

There are only two minor points to which I now wish to refer very briefly. They concern paragraphs 24 and 25 of the Report. Now, there are many parts of the country which are directly administered by the Central Government at the present time—Ajmer-Merwara, Coorg, Baluchistan, the North-West Frontier Province and even Delhi itself. With reference to the North-West Frontier Province, another sub-Committee of this Conference has reported on the constitution which that Province should have; and, if these recommendations are adopted, it is no longer going to be directly administered by the Central Government or by the Federal Government. Now, My Lord, the Finance sub-Committee suggests that the Federal Government will be in charge of these areas. I do not want to raise this question as a matter of finance, but I should have thought that, normally speaking, the Federal Government ought not to be in direct charge of any particular area. It is possible there may be difficulty with reference to one or two areas like Baluchistan; but I envisage the future to be one where the Federal Government has no direct charge of any of these areas. In the result, those areas will be absorbed in some Province or other. Baluchistan will be one of those areas which cannot be absorbed, and therefore is an exceptional case which may be treated as a Province directly administered by the Federal Government.

Chairman: Would you mind not going quite so fast. What were you saying about Baluchistan?

Diwan Bahadur Mudaliyar: There are two Provinces which, by their position, are of fundamental importance to the Federal Government. They are the North-West Frontier Province and Baluchistan. So far as the North-West Frontier Province is concerned, if the recommendations of the North-West Frontier Province sub-Committee are accepted, it may not be any longer centrally administered; it will be a Federal Unit. So far as Baluchistan is concerned, it is recognised that it cannot form a Federal Unit at the present stage; nor do I recommend its absorption into any other Province. Its position in contiguity with Foreign States makes it essential that the Federal Government should have some amount of control and direct charge of this particular Province. But, barring Baluchistan, I envisage the future to be one where the Federal Government has no direct charge of any Province whatsoever. I make one exception. The Capital of the Federal Government is a different thing altogether. The Capital of the Federal Government has always been, in several Federations, in direct charge of the Federal Government; so that New Delhi will be in charge of the new Federal Government, but Old Delhi will go back into the Province to which it originally belonged. The complications which would arise under any other system are obvious. At the present moment, Ajmer-Merwara, for instance, is centrally administered. Its Budget is referred to the Central Government, and a Member represents it on the Central Legislature by nomination. In the future Federal Legislature we are going to have representatives only from the Provinces and States which form part of the Federa-

tion. I do not see what the position of Ajmer-Merwara will be—nomination being ruled out of the question. I do not know whether we ought to make special provision for the representation of Ajmer and Merwara alone.

Chairman: Can you group?

Diwan Bahadur Mudaliyar: We cannot group for this reason. Even if Ajmer and Merwara were to have one Member, Coorg is too small to afford to have one Member.

Chairman: What is the population of Coorg—163,000?

Diwan Bahadur Mudaliyar: About that. It may not be possible to group Ajmer-Merwara with Coorg at a distance of a thousand miles and with nothing in common.

H.H. The Maharaja of Bikaner: Could not you take Ajmer-Merwara into the United Provinces?

Sir Tej Bahadur Sapru: The question about Ajmer-Merwara has several times come up before the Government of India, and I suggest that you should obtain information on that point, Sir. As a matter of fact, the proposal was at one time that Merwara should be attached to the United Provinces and become a part of the Ambala Division, and it is by no means impossible to do that.

Dr. Shafa'at Ahmad Khan: The United Provinces Government refused that.

Sir Tej Bahadur Sapru: And so far as the traditional administration of Ajmer-Merwara was concerned, the Court exercised a certain jurisdiction in regard to certain matters. I have practical experience of that.

Mr. Iyengar: I would only say that, with regard to each recommendation on these things, we were not discussing the question as to whether there should be any federally administered areas. If they exist they should be borne on the Federal estimates. That is the only thing we are saying.

Diwan Bahadur Mudaliyar: I am only anxious to put forward the converse proposition, that our acceptance of this Report should not mean that we are committed to the administration of these areas. On the other hand, at some stage I hope that this Committee will decide whether there should be these centrally administered areas or not.

Dr. Shafa'at Ahmad Khan: They will have to, later on.

Diwan Bahadur Mudaliyar: I was mentioning Baluchistan, the Andamans and other places which, if we proposed to maintain them as such, would have to be centrally administered; but other areas, like Coorg and other places, will have to be absorbed in some Unit or other of the Federation. As regards paragraph 25, Commercial Departments, I would only emphasise what Sardar Ujjal Singh has said, that on another occasion some of us emphasised the establishment of a statutory Railway Authority, without further reference to this question. If, by a statutory Railway Authority is meant a

body which would come into existence by a Statute of the fu Federal Legislature, I would have no objection; but if by th meant a body which will be brought into existence before Federation comes into existence, I should like again to enter caveat against that position.

That is all that I have to say.

Lord Peel: I should like, if I might, to say two or three wor I will not keep the Committee at all long, but unfortunately cannot be here to-morrow morning, or I should have had perhaps detain the Committee for twenty-four hours or so with a reply all the very difficult and detailed points that have been raised; an therefore I will only be now quite a few minutes. I think that th sub-Committee can congratulate themselves that there is genera assent to the principles which have been laid down. I think, s far, that is very satisfactory. I also listened very carefully to al the multitude of criticisms that have been brought to bear upon the Report, and I have come to the conclusion—it may be a rather arrogant one, perhaps, from the point of view of the sub-Committee, but it is a collective arrogance—that the difficulties and the points that have been made by so many critics have been rather due to the very difficult and complicated nature of the material with which we were dealing than to any shortcomings in the sub-Committee itself. I feel that one thing that some of the speakers possibly may have missed is this. They were pressing very strongly certain points of view, many of them very logical points of view indeed; but the Report we have presented to you was the result of deliberation between a number of men representing very different points of view, and therefore you must accept—if you will accept—the Report as the result of a compromise very largely between those views, in which no side really carried out all the views with which they had originally started, but in which they showed a great deal of good will and sense of compromise in reaching these results. That is very largely an answer to many points that have been pressed by the different members of the Committee.

I do want to say something by way of reply to the points which have been raised in different forms, first of all against the appointment of this Expert Committee, and secondly as to some of the duties with which it is proposed to be entrusted. First of all, I may say in passing that the word "determine"—perhaps a bad word to use—quoted by Pandit Malaviya, does not mean in any sense final determination. All the suggestions made by the experts are liable to acceptance or rejection; there is nothing final, of course, about what they say. But there has been some anxiety exhibited on two grounds. One is that, by the appointment of the Expert Committee, there might be considerable delay, which delay might militate against the drafting of the Bill and its passage through Parliament. I think that has been the main ground on which the objections have been raised to the establishment of this Committee. It is quite true that Pandit Malaviya took rather a different line—perhaps I may be allowed to say, a more subtle line—

—because he did not so much criticise the setting up of the Committee as the fact that a number of subjects to be entrusted to the Committee were not suitable for consideration by the Committee itself.

There are two or three observations I should like to make on that Committee. The first is that I think the length of time which that Committee might take to do its work—I am talking of the working out of general financial principles, and not the other question of dealings with the States—has been the subject of some exaggeration. Also, there has been exaggeration as to the size or extent of the tasks with which that Committee might be entrusted. I urge upon this Committee that they should agree to the setting up of the Expert Committee because it is the natural and necessary sequel to the work done by the Finance sub-Committee itself. It was suggested by Mahatma Gandhi that this Report should be referred back in order that it should set out clearly what were the general points or principles on which we were agreed and possibly go a little further into some of the details. I accept the compliment Mahatma Gandhi paid to the sub-Committee in wanting to reconstitute it and give it a further term of office, although I must say that the suggestion does not arouse great enthusiasm [illegible] breast. But I think the Chairman of the sub-Committee is [illegible] the best person to pronounce judgment on that kind of [illegible]. One of his most difficult duties in a matter of this kind is [illegible] as to the limits within which such an investigation should [illegible] out. On the one hand, the investigation may be too [illegible] other hand, it may be too wide, and it may go [illegible] infinite ramifications. The Chairman's duty is [illegible] a sort of middle way in which he lays down, or [illegible] Committee to lay down, the principles as definitely as [illegible] were going into all the different side-channels [illegible] in the course of the investigation, it comes very [illegible] however careful you are in words to lay [illegible] and your principles, yet they must be subject [illegible] gations, to figures and to facts which [illegible] well be at the disposal of a committee [illegible] within which our sub-Committee [illegible] —if I may use the expression—the [illegible] want an Expert Committee which [illegible] figures and so on and work out the exact [illegible] the principles themselves.

The question has been [illegible] Budgets. That is, of [illegible] and that in itself, [illegible] the Expert Committee [illegible] that should easily [illegible] in that way should [illegible] I do not think [illegible] the framing of [illegible] are other things [illegible]

I believe, on the contrary, that if you did not set up a committee of that kind, there would be considerable delay when these matters came to be discussed in Parliament, because they would not be sufficiently defined, and that would lead to discussion and to delay.

The other point on which much has been said, and which is involved in the same question, is this. Would it not be better to leave a number of these points to the subsequent consideration and decision of the Federal Government itself? It is said that, the general principles having been decided, these other matters might be worked out in that way. Now, I am limiting my observations to remarks made really in my capacity as Chairman of the sub-Committee; I am not speaking with any wider authority than that. I think it must obviously be a matter of consideration afterwards as to which of these questions must be settled and dealt with before they can be embodied in the Bill itself, and opinions, I think, must inevitably differ as to the extent to which some questions may be left over and others must be decided on; but there are two things I should like to say. There is such an immense amount of work before the Federal Government when it is established that I think it would be grateful if as many of these questions as possible are decided beforehand.

Pandit M. M. Malaviya: If Your Lordship will excuse my interruption, will you mention one or two matters which you think should be decided before the constitution is framed?

Lord Peel: I will try to mention one or two things. I was just coming on to that point, in fact. It has been borne in on me very strongly, not only by my experience in the Conference but also by my experience in the sub-Committee itself, that there does prevail a very great anxiety amongst the representatives of the different future constituent elements, both Provinces and States, to know where they stand from a financial point of view. I need hardly mention the question of autonomy in the Provinces and the question of contributions by the States. I cannot help thinking that it will assist the formation of the Federation enormously if you are able to embody very substantial propositions as regards the divisions of finance and other matters, the allocation of the heads of revenue between the Federal Government and the Provinces, before you set up your Federation. I do not say you will ever see a complete picture, but I think it is obvious you want to see the picture as complete as you reasonably can; because I may remind my friends of the necessity for confidence, which, after all, is the greatest thing in all constitutions and the working of constitutions. You should start the constitution, therefore, with the very largest measure of confidence that you possibly can; and therefore, though I think it is very likely that some things may be left over, yet I think some of those essential things on which I lay great stress, such as the allocation of the heads of revenue, must, very largely, be embodied in the constitution.

I frankly own that my personal opinion was that rather more elbow room should be left to the Federal Government than most

of my colleagues were ready to concede. They were very anxious that all the different heads of revenue should be specified and allocated between the Federal Government and the Provinces. Indeed, we had something in the nature of a question about these residuary or unspecified powers, a battle which seemed to me largely of academic interest from a practical point of view, but over which there was a very keen dialectical contest. Therefore from the point of view of separating what we can and getting as much of a picture as we can and as much confidence as we can, it seems to me that three or four months would certainly not be wasted, would delay nothing, and would be usefully employed by an Expert Committee which had the facts and figures before them in trying to shape our principles into practical form and presenting them so that people would know what they were like before they were embodied in the constitution.

I should just like to say one word more, which I think may elucidate the position, by describing the way in which the idea of the Expert Committee arose in our minds. As we proceeded with our work we found that, here and there, and by the way, there were a great many issues—a great many avenues shall I say—which wanted examination, and with which really we could not deal, I will not say with the capacity at our disposal, because we had great capacity at our disposal, but with the limited amount of time and with the limitation of knowledge and of detail which we had before us. Then, as we proceeded with our investigation the duties, I am bound to say, of this Expert Committee began to grow. Then we thought that, if they were all given to one committee, the time would be rather long in which that committee would be occupied; and we decided to divide it into two committees, with the Chairman as a possible link between them, because the two things are connected together. But I think there is a very clear distinction which the Committee might bear in its mind between those subjects which have to be pretty closely dealt with in order at least to be embodied in the Bill itself, and other matters—some of the negotiations, for instance, with the States—which one would like to have settled if possible, but which I quite agree may take a considerable time. They may take a considerable time for this reason—because, of course, you cannot negotiate with the States as a body, as is well known, but you have to deal with each State individually. Speaking generally, I should certainly not like to commit myself to the point that there should only be one Expert Committee dealing with these matters. It may be there will have to be more than one; it may be that individuals will carry it out; but I will not stop in matters of that kind. I think that the distinction is clear between the work of the one committee and the work of the other.

I do strongly urge the Mahatma that he should not press upon us the duty of carrying out any further investigation of these principles, because I honestly think that we have done as much as we can in that respect, and that it would be a pity to break up, or to run the chance of the breaking up of, a compromise which was only

reached after a very careful discussion and a great deal of give-and-take on both sides. I do not think, therefore (and I think on investigation I shall prove to be right), that the setting up of this committee, and its investigation and its Report, would prove to be any obstacle, or cause any delay, to the drafting of a Bill and the bringing it before Parliament. I therefore strongly urge that our proposal in that way should be accepted; and on behalf of the sub-Committee I am most grateful for the way in which our general proposals have been received.

Sir Tej Bahadur Sapru: May I be permitted to ask a question of Lord Peel? Will he please tell us what will happen in three or four months, when the Report of the Expert Committee has been submitted to us? How will the agreement between the Indian States and British India then be arrived at? What is the machinery that he contemplates for that?

Sir Muhammad Shafi: "Submitted to us"—what does my friend mean by that? You said that when, three or four months hence, the Report is "submitted to us"—

Sir Tej Bahadur Sapru: No, Sir Muhammad; probably you thought of it in your own mind. I said, what is to happen when the Report of that Committee has been submitted?

Lord Peel: Has been submitted? Well, I quite follow your question, but I find some difficulty in answering it, because, of course, if the Report of that Committee, as I think it probably will, dots the i's of the principles to be laid down, and shows the way in which they can be carried out, then I suppose that our general proposals will be embodied, so far as they can be embodied, in a Bill.

Sir Tej Bahadur Sapru: You appoint a Committee now. That Committee sits and works for three months. It reports to somebody or other in the world. How are the two Units, the British Indian Provinces and the Indian States, to come to any agreement on that; or is it to be independent of agreement and to be imposed upon the Federation? That is really the difficulty that I feel. There can only be one answer to that, I submit—namely, that you must call a third Conference, as has been suggested by Dr. Shafa'at Ahmad Khan and Sir Muhammad Shafi; but if that is the proposal, that you must call a third Conference, then frankly we owe it to ourselves to discuss that matter. I thought Sir Muhammad Shafi used the words, "God forbid that we should have a third Conference." That is more or less our sentiment. If we are having a completed picture, I want to have a completed picture of that proposal.

Lord Peel: Well, you are asking me. I am sitting here for the moment merely as Chairman of the sub-Committee.

Sir Tej Bahadur Sapru: But you must not give us an incomplete picture if you want us to accept your picture.

Lord Peel: Well, it is only an incomplete picture in the sense that we have laid down the principles; and I do not know that a

great Conference of this kind can do more than lay down principles, can it?

Chairman: Lord Peel will do the picture. Then we shall want a frame to put the picture in. We must see what we can do to get the frame.

Sir Tej Bahadur Sapru: I do not know what the proposal is.

Lord Peel: I think I cannot answer that.

Chairman: The point which Sir Tej Sapru has raised is one which will have to be considered.

Sir Tej Bahadur Sapru: If the Government have got some proposal in connection with it, then it is fair that we should know what that proposal is before we are invited to accept the proposal.

Chairman: What do you think would be the best thing, Sir Tej Sapru? What do you suggest should be done? Perhaps you would like to reply to-morrow.

Sir Tej Bahadur Sapru. I will reply to that to-morrow. If any machinery can be suggested to me for bringing about the agreement between that bloc and this bloc at the end of three months, I should like to consider it; but it is no use your saying that you are putting off the thing for three months or four months, and then you withhold your consent until then. Consent has got to be arrived at at some stage or other—unless, of course, the idea is that the consent of the two parties is not wanted, and that it will be His Majesty's Government who will impose their decision on both, in which case it is not the idea of federation.

Sir Akbar Hydari: It is not merely agreement of the two parties, Sir Tej. As I understand, in order to draft your financial provisions, even if we all agreed, you would have to have certain enquiries.

Sir Tej Bahadur Sapru: I have not the least objection to that suggestion of yours, but I do say that that presupposes that you and we have agreed to certain principles, and having agreed to certain principles we leave it to the experts to work out the details. I have not the least objection to that proposal; but if there is no agreement on the principles, then everything is in the air, and I want to know then, how do we come down to any concrete proposals for purposes of agreement?

Sir Akbar Hydari: Those principles are not enough.

Sir Tej Bahadur Sapru: What happens then, Sir Akbar? That is what we want to know.

Sir Akbar Hydari: I will explain; but our difficulty is that, and I think Lord Peel has very well brought it out.

Pandit M. M. Malaviya: I should be very grateful if Sir Akbar Hydari would explain his scheme. I am very anxious to know at what stage you want agreement, and how that agreement is to be arrived at.

Sir Akbar Hydari: I want to make it quite clear that it is not merely a matter of agreement, but we really have not sufficient data for agreement. That is the point. There will have to be certain data collected, and I say that this is necessary even on the British Indian side, unless it is proposed to construct your Federation keeping to yourselves whatever revenue you have got.

(The Committee adjourned at 4-10 p.m.)

PROCEEDINGS OF THE THIRTY-SEVENTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON THE 16TH OCTOBER, 1931, AT 11 A.M.

HEAD 4.

Distribution of Financial Resources between the Federation and its Units.

DISCUSSION ON THE REPORT OF THE FEDERAL FINANCE SUB-COMMITTEE *(continued)*.

Chairman: I just want to announce one thing, if I may. As a result of yesterday's discussion—and I think it will be assisted by the discussion of to-day—I am very glad to say that the various parties interested desire to meet on Monday, when I think there is a very good chance—and I say a very good chance, because I have seen the parties—of coming to almost complete agreement—anyhow, to a very large measure of agreement on this Federal finance question. I am very gratified by that, if you will allow me to say so. I quite see that there is a great deal to be said for both parties. It rather reminds me of what I used to feel when I was a Judge. After the plaintiff had sat down I always thought he was right; after the defendant's counsel had sat down I always thought he was right; and when the plaintiff had replied I did not know who was right! Anyhow, I am very glad to think that we shall probably get a settlement on this particular matter, although we do want to hear the views of one or two people this morning. In order not to waste time I suggest that we might finish the debate this morning (it will not take long) and then I want to put before you a few notes on the subject of the Federal Court. I would like to place these notes before you so that you will be in a position to consider them during the week-end.

Sir Mirza Ismail: Lord Chancellor, I think there is considerable force in Mahatma Gandhi's suggestion that the Report be referred back to the sub-Committee with the direction that it should try and lay down such general principles and make such definite proposals as would be acceptable to the States. If I understood him correctly, his main object—his real desire in suggesting this procedure—was to secure agreement on certain essential principles and on proposals which the States would have no hesitation in

agreeing to. Speaking for myself, I see absolutely no reason why the States should have any hesitation in agreeing to most, if not all, of the general principles so ably stated by Mr. Rangaswami Iyengar in the course of his remarks at our meeting yesterday. The great thing is that the work of this Conference should proceed smoothly, uninterruptedly and rapidly. Definite conclusions should be recorded wherever possible, so that we may know where we stand. The settlement of various details entailing adjustments may come later; indeed, we all know that no State stands irrevocably committed to the idea of Federation. Nevertheless, we must proceed—and we have all along proceeded—on the assumption that there is to be an all-India Federation comprising the States as well as the Provinces Otherwise, what would be the alternative? Is the work of the Conference to be held up, and the drafting of the constitution to be delayed, until such time as every one of the 500 or 600 States has been consulted and has agreed to every one of the proposals, to every detail of the scheme? While this Conference does not, I believe, expect each and every State to make a definite declaration that it will come into the Federation whatever might be the conditions attached to its entry, it has a right to expect the States to agree to the main outline of the scheme and to certain essential principles at once. Such States as are dissatisfied with the scheme that finally emerges in the form of a Parliamentary Bill will be at liberty to keep out of the Federation. The time for a final decision will come when they are asked to sign a Convention to that effect. Until that time they are absolutely free

It is scarcely necessary for me to add that the more attractive the scheme is made for the Indian States the larger the number of adherents it will secure. We may be sure that, bearing this aspect of the problem in mind, both the British side and the British Indian section of this Conference will endeavour to make the completed picture as pleasing as possible to our eyes.

Colonel Haksar: In view of what you announced this morning, I think I may be permitted to reserve my remarks until Monday, by which time I hope that not merely a large measure of agreement, but possibly complete agreement will be attained between us.

H.H. The Chief of Sangli: My Lord Chancellor, I think it will be appropriate if I speak a few words, as I represent here a large number of the small States. In this capacity, and voicing their feelings, I reiterate what His Highness the Chancellor of the Chamber of Princes and His Highness of Bikaner stated yesterday —that the States are whole-heartedly in favour of the idea of Federation and will do everything in their power to assist in the realisation of the ideal. We are all keenly interested in setting up a system of Federal finance which will enable the Government of the future Federal India to discharge its important functions efficiently and well, and at the same time will be fair to the Units concerned. If I may say so, the smaller States, with their limited resources, are even more vitally interested in this question than other Units.

The Finance sub-Committee has done its work in an admirable spirit and deserves our congratulations. I am glad that the sub-Committee has laid down, and that this Committee has accepted, that there should be an equitable apportionment of burdens on the Units. In paragraph 18 of the sub-Committee's Report, the question of the States' contributions—cash payments and cessions of territory—is dealt with. I feel confident that the adjustment of this question will not present any special difficulty. In this connection, I should like to express my agreement with what Diwan Bahadur Krishnama Chari stated in his speech in the sub-Committee on October 2nd on these issues. I am glad that the abolition of cash payments has been agreed to and endorse the appeal made by Sir Mirza Ismail on this subject. Speaking specially with regard to the States that have ceded territories in lieu of cash payments originally fixed, these are only a few in number—four or five. And they are amongst the most convinced advocates of Federation, and will, I am sure, readily agree to an adjustment which would be eminently fair and reasonable to both sides, and which need not delay in any way our proceeding with the new constitution. My object in referring to this is to assure my colleagues here that these questions are by no means difficult or complicated, and that, if an equitable adjustment of them is easy of attainment, the States are as anxious as British India that there should be no impediment to the realisation of the idea of an all-India Federation, in which we all believe and for which we are all working.

My Lord Chancellor, I shall not detain the Committee any longer.

Sir Akbar Hydari: I have considered very carefully the suggestion coming from Mr. Gandhi that this should be referred back to the Finance sub-Committee again. I want simply, and in a very few words, to explain what really our position has been. Let me assure Mr. Gandhi that we did try to see whether we could produce a minimum Federal scheme as we thought. He will remember that we had already agreed in the Federal Structure Committee as to certain sources of revenue, like Customs and Salt; and if, with these sources of revenue, we could have produced a balanced Budget, there was nothing better. If you remember, I said—and I say it again—that, if you are going to confine yourselves to the present revenue and expenditure of India as they are, to the burdens on the Provinces and the States which exist at present, without any compensation one way or the other and without the imposition of any fresh burdens, I for one will not object to a financial settlement of that kind and to starting the Federation on that basis as a final settlement. But what did we find when we had all the papers before us and when we went into Federal finance? We found that neither the British Provinces nor the Indian States were prepared to go into the Federation with the existing burdens both on the British Indian Provinces and on the States. It was contended—and the contention, Mr. Gandhi, was especially on the British India side—that even the existing financial position was

such that it was absolutely necessary on grounds of financial stability *for the new Federation to have access to fresh sources of* taxation. The difficulty was brought out very clearly in the *Memorandum on Federal Finance of the Government of India*, which was placed in our hands. At the top of page 13 of that Memorandum, you will see that it says:—

> "The main point which emerges from these specimen budgets is that, as a result of treating Income-tax receipts as available *for distribution among the Provinces—subject* only to the deduction of a fixed sum to meet 'Central' *charges—a balance would be released for the benefit of the* Provincial revenues, while the Federal Budget would be left with a deficit . . . . On the basis of the picture thus presented the chief practical points for consideration must be: (1) Whether such a deficit on the Federal Budget could be met. (2) Whether the result arrived at is really fair to all members of the Federation."

It was because these were the points placed before us that we had *to go into different matters, and we came to the conclusion that* a reply to these questions could not be made except with the assistance *of experts. I repeat, therefore, that if you confine yourself* to starting with the existing burdens on all alike and do not impose any fresh burdens on any of the Units in any case whatsoever, and if you put that in the constitution, then I for one have no objection; but, as I say, you are not prepared to do that, and for one very good reason, namely, that you will not have a balanced Budget and you want to avoid the pitfall to which Lord Lothian so eloquently, so pertinently and so clearly referred yesterday, namely, the pitfall of concurrent jurisdiction. There is a necessity for *having in the Federation everything specific, so as to avoid a* wrangle such as might occur on the very first day when the Federal Budget is presented with a deficit which you have to balance.

Mr. Rangaswami Iyengar, who knows that I have a great respect for all his views, in supporting the proposal to send back the Report to the sub-Committee said that such and such things could be embodied in the constitution. I say that those things, if they are sufficient, could be embodied in the constitution without referring the question back to the Federal Finance sub-Committee. But what are they? He says we start on the assumption that *the replacement of the present Government by the Federal Government* is not to involve any disturbance of the existing position. If it means what I have put down, I have nothing to say; but he says that it might be drafted in the following form:—

> "Parliament shall have power to levy taxes, or duties for *imports in accordance with the allocation of resources hereinafter* made as between the Federation and its Units—Provinces, States and Territories—save as hereinafter provided, and until Parliament shall otherwise provide *in accordance* with the procedure hereinafter laid down, the existing distri-

> bution of resources, between the Federation and the various Units, shall continue undisturbed."

So that he himself in this clause also provides for something which will have to happen hereafter, and to which we shall have to agree after we have constructed the Federation. Take his second point:—

> "We may provide on an agreed basis that there shall be paid out of the revenues of the Federation the interest and debt charges, subject to scrutiny and expert enquiry."

Take his third point:—

> "The revenues shall be from sources of Federal and Provincial taxation, the resources of the Indian States being specified or not as the case may be, but with their present rates."

There is another very important clause:—

> "In cases of grave emergency and for the protection of the credit of the Federation, the Federal Government may, with the assent of the Federal Parliament, call for contributions from all Units of the Federation in the manner hereinafter to be agreed upon."

Lastly he asks:—

> "As soon as may be after the coming into operation of this constitution, a Commission shall be appointed who shall investigate and report on the following matters to the Federal Government for such action as it may decide to take on the advice of Parliament."

These are all things which, if I may say so, cannot be left to an expert enquiry hereafter. Most of them are such that you will have to decide upon them from the very beginning. It was the demand of the British Indian Provinces that we should not content ourselves with only the taxes which have been agreed upon as Federal, but that we should go beyond them and have "direct" taxes, like the Corporation tax and others, put on. Personally, so far as I am concerned, speaking for Hyderabad, I have no objection; but most of the other representatives have very strong and very valid objections. It is merely a question of justice whether what we are being asked to agree to shall not be placed clearly before everybody before he is asked to agree to it. I hope, therefore, that everybody will agree that either you put in the constitution vague, general phrases, or you put into the constitution specific decisions which avoid the pitfall of concurrent jurisdiction. For the former case what you have done already—your Report of the sub-Committee—is sufficient. It is being referred back to the Finance sub-Committee and will not need to go further. For the latter, it is necessary that you should have some Expert Committee with regard to at least some points that are absolutely essential for making your financial provisions in the financial chapter of the constitution sufficiently definite to enable everyone to say that a really definite, concrete proposal and scheme of Federal finance is before the people who have to decide.

Chairman: Would you kindly help me with regard to one thing which is a point of drafting? It is really not controversial at all. Which do you think would be best? It can be done in two ways. Do you think it is best to keep the actual part of the constitution as short as possible, and instead of putting them in a chapter to put finance and various other questions in the schedules? Which do you think, as a matter of drafting, is more convenient? You see, what you could do is this. You could draft a pretty short constitution on the constitutional things, and then you could, if it is a matter of convenience, put a number of these questions, like finance and like the franchise, and so forth, into schedules.

Sir Akbar Hydari: I think that probably schedules would be the better course. The only thing is, what will be the reference to the schedules as regards any alteration—I mean, so far as any change in it is concerned, whether the change would be subject to the same procedure as is necessary for the main portion of the Act or not? It would depend on how you put it.

That is really the position. I am quite prepared to go on on the existing basis if you fix upon it as being the final one and provide for anything beyond through the taxes which have been already federalised; but that is not what British India considers sufficient. It has, and quite rightly, I think, considered that it has to provide for various definite elements in the Indian finances that exist at present, and also for emergency powers and for powers for balancing the deficit. All that requires an exploratory committee, and really we are in that way not obstructing federation, we are not delaying federation. As we proceed with our work there will be several exploratory committees of this kind which will be required before you can frame your constitution. What about the distribution of seats to the States *inter se?* This will *require an exploratory committee. There will be several other* committees as we go on; and, after all, if it is a question of three or four months, what does it matter, because how I envisage the whole thing is this—and I am here coming to the point which was raised by Sir Tej Bahadur Sapru—and what I feel, with regard to these exploratory committees, is what will happen to their Reports? That is a pertinent question. As I envisage it, the future conduct of our work will be somewhat as follows. His Majesty's Government will consider the Report of the Conference; they will consider the Report of the various Finance and other Committees which are set up; and, on the basis of all this, they will be able to put up a draft Bill which I consider to be the "picture" which will have to be presented to us. This draft Bill will be presented, I take it, according to precedent, to a Committee of the two Houses, and it is at this stage when we also may consider the picture and submit it to discussion. In any case, there will be a definite time when the picture, in so far as it can be completed, will and must come up for consideration by the representatives at least of the Indian States. Therefore I say we have accepted the Report of the sub-Committee so far as it goes, but with the material at its disposal it could not go further.

distinguished it may be and howsoever qualified it may be from an expert point of view. It seems to me, therefore, that if we can arrive at an agreement on certain questions of principle, we ought to accept those principles as agreed principles and allow them to be made the basis of the constitution. The other day, when I was speaking, Mr. Jinnah said "Where is this scheme?" My answer to that is that it is for us to bring the scheme into existence. When I remember that Lord Peel's sub-Committee sat for days together and arrived at the Report which we are considering, I feel that that Report contains so many principles on which there was agreement that I venture to think we ought not to hesitate in expressing our agreement with them in this Committee so far as they go, and asking you to accept them as the basis of the constitution. If there are any outstanding questions, not of the character of principles but of the character of details, we can devise appropriate machinery for the working out of those details; but, whatever be the machinery that we devise, and whatever be this settlement that may have to be arrived at, let us not forget that it will be a settlement arrived at between the Indian States on the one side and British India on the other side.

It is not fair to His Majesty's Government, nor to the Indian States, nor to British India, that we should shirk our responsibilities in this matter and say to His Majesty's Government—"Somehow, and in some way or other, you should arrive at a decision for us, because we cannot apply our minds to this question." I therefore, with all respect but with all the emphasis of which I am capable, ask Their Highnesses to remember that it is they on their side and we on our side, just as much as His Majesty's Government, who will have to discharge that responsibility and that function. To say, therefore, that we may appoint an Expert Committee and leave it to His Majesty's Government to arrive at some sort of conclusion, is to deprive ourselves of the privilege of deciding for ourselves and to go against the terms on which we were invited to meet. It is for that reason that, I venture to think, Mahatma Gandhi puts forward his proposal. I am not afraid at all of the incapacity of Lord Peel's sub-Committee to arrive at some definite conclusions if they apply their minds to them. I do not share the despondency or the diffidence of one distinguished member of that sub-Committee—I mean Sir Maneckjee Dadabhoy. I believe there is enough common-sense and enough statesmanship in that sub-Committee to see that it is they who have to advise us on the questions of principle on which they have not yet made up their minds or on which there may be occasion for further discussion.

There is only one way of getting out of Mahatma Gandhi's proposal, and that is by coming to conclusions amongst ourselves. Well, I entirely endorse the remarks made by Sir Mirza Ismail this morning. His remarks are of the most hopeful and, from my point of view, of the most helpful character. While we may think that we should appoint a committee to explore avenues for

are to do so, or whether, in entering upon Federation, each party will refuse, say, for the time being, to take over any further burdens. That, to my mind, would be the principle that would guide us in coming to an apportionment of revenue and expenditure.

The difficulty, therefore, really, that has appeared to me as a result of having listened to all these discourses, is one not of principle, but rather, if I may respectfully put it, of disinclination. If we have got the determination that we want Federation, that we want Federation at any cost consistently with the self-respect of each party, or each partner—if we have that determination I again, as I say, as a simple man, a layman, can see no difficulty whatsoever. All we have to do is to find out those heads of revenue which we can easily understand without any complication, and we set about saying, " These are the heads of the revenue which we shall hold jointly. The balance will go either to the Federal Government or to the Provinces ". That distribution can, in my opinion, easily be made. To-day the greatest difficulty lies in bringing the States' and the other Delegates together and coming to a conclusion. If we lay down the principle that neither party is just now to bear any fresh burdens, we shall divide the heads accordingly; or if there is going to be a little give-and-take, each taking a little more responsibility, we shall arrive at a conclusion in accordance with that principle. Nor do I see any difficulty in finding what items of expenditure we are going to hold in common. If we have come to the conclusion that, at the present moment, we are going to have A, B, and C sources of revenue, we know to-day, so far as our information permits us, that from these three sources we shall get so much revenue. Then we shall take such heads of expenditure as will balance that revenue. I know that our estimate may prove to be wrong; it will be time enough for the Federal Government to decide how it would adjust the difference. If there is a surplus, there should be no difficulty; if a deficit, naturally there would be some difficulty, but not one of us expects that the Federal Government will, when it is launched out on the stormy ocean of responsibility, meet no difficulty whatsoever.

I see that there is a kind of fear regarding decisions by the Federal Government, seeing that, in the Federal Government, up to now, we have pictured to ourselves a majority of those on the British Indian side; so that the fate of the States might be in the hands of that majority. If there is any such fear, we need not have any reservation whatsoever, or we might have some such reservation as I can just now think of, namely, that, unless there is an agreement between a two-thirds majority of the Princes on the one side and a similar majority on the other, there will be no decision taken binding on both sides. I take that by way of illustration as it comes into my mind whilst I am speaking. I simply say that difficulties of this kind need not baffle us, and I feel that we ought to get rid of this incubus of expert opinion at every point. We are, after all, a poor country, and we are not going to get the assistance of experts at every turn.

I think that, in India, we have intelligence enough to understand roughly what we want without having the guidance of experts; and, in my humble experience of things of the world, I have seen that when you go to experts sometimes you founder, because one expert says one thing, another expert says another. And when you come to matters of finance, which are ordinarily too deep for humble folk, these folk do not know which expert's opinion to take; so that they cast lots and trust to the future, saying that they are not going to be buffeted about by these experts. You find the same thing in law, with all deference to the Lord Chancellor.

H.H. The Maharaja of Bikaner: You are a distinguished lawyer yourself.

Mr. Gandhi: That is why I speak from bitter experience. The same is true of medicine. Heaven help us from medical men! Let us get rid of these difficulties that experts cast for us. After all, if we make any mistake, we ourselves will be the sufferers. But if we tread upon this ground with fear lurking in our breasts, we shall not be able to evolve a scheme consistent with the dignity of the great and ancient country that we are. I have therefore simply explained my position as a very simple man before this Committee, so that, when we have these informal conversations, we may approach the question with fresh minds and not with minds full of dread.

May I, as I conclude, respectfully suggest to the Princes that they have come here with their experts also. They have brought their best men here. I will trust myself to those experts, and use my commonsense judgment also if they dare to mislead me. But I shall be entirely satisfied, and in a few hours come to a definite conclusion as to what I want and what I do not want. Hence I remain absolutely convinced that we should either send this thing to Lord Peel's sub-Committee, putting the burden on them to come with a definite conclusion, or, instead of worrying that sub-Committee, some of us should sit together and produce a very humble agreed scheme with which we can start the financial part of the Federation.

Chairman: I want only to say one thing in conclusion, and then, for a few minutes, I shall say something on the question of the Federal Court; and then we shall finish for to-day. It seems to me there are a number of loose ends which will have to be tied up; as, for example, the franchise, the allocation of seats, and Federal finance. The Government will have to consider such matters with a view to any future Bill in Parliament. In drafting this Bill it will greatly help the Government to know how far, on the questions dealt with by these various Committees, there is an agreed Indian opinion. I need not remind you that the fact that there is Indian agreement will be very carefully considered by, and will naturally carry great weight with, the Government, and will make the Government's desire to assist in facilitating a new order of things much more easy of accomplishment.*

Head 8.

The Federal Court.

The following points for discussion in connection with this Head were drafted by the Chairman:—

(1) *Should members of the Federal Court be appointed by the Crown and on what tenure?*

(2) *Should the Court have an original and an appellate jurisdiction, or only an appellate?*

(3) *Should the Court have an exclusive original jurisdiction,* e.g., *in the following matters (non-justiciable matters being excluded)—*

(a) *disputes between the Federation and a State or a Province in any matter involving the interpretation of the constitution;*

(b) *disputes between two States, two Provinces, or a State and a Province, in any matter involving the interpretation of the constitution;*

(c) *the interpretation of agreements between the Federal Government and a State or a Province, or between two States or two Provinces, or between a State and a Province, and any question arising thereunder?*

(4) *Should the Court have an exclusive appellate jurisdiction from State Courts and Provincial High Courts,* e.g., *in any matter involving the interpretation of the Constitution?*

(5) *Should provision be made for special references by the Governor-General to the Court as under Section 4 of the Judicial Committee Act, 1833?*

(6) *Should there be a right of appeal from the Federal Court to the Privy Council as of right or by leave of the Court, the right of the Crown to grant special leave to appeal to be preserved in all cases?*

(7) *What provision should be made for the enforcement of the judgments of the Court in the States and in the Provinces respectively?*

Chairman: With regard to the Federal Court, I should [illegible] to make a few remarks for your consideration. You will [illegible] understand that I am not saying these are the final solution of [illegible] difficulties; all I am putting forward are heads which you will [illegible] to consider in coming to a final solution.

First of all, the necessity of a Federal Court as a [illegible] the constitution is beyond controversy, but the value of the [illegible] will obviously depend to a large extent upon the [illegible] character of its personnel; and it is accordingly [illegible] Judges of the Federal Court should be appointed [illegible] The Act will have to prescribe the [illegible]

and it may be anticipated that the States will desire that they should be represented in the Court.

On the analogy of most constitutions, the salaries and pensions of the Judges will presumably be non-voted, and they will be given security of tenure.

It seems desirable to appoint some place for the seat of the Court, but considerations of climate and distance may require the Court to sit at other places from time to time. It is accordingly suggested that the Chief Justice should, with the consent of the Governor-General, be entitled to appoint places for the sessions of the Court as occasion requires.

Having regard to the prestige and reputation of the existing High Courts, it does not seem necessary to exclude from their jurisdiction certain matters which, in the case, for example, of Australia, are left to the exclusive jurisdiction of the Federal Court, namely, matters affecting Consuls or representatives of other countries, or disputes between residents of different States, or cases in which a writ of mandamus or injunction is sought against an officer of the Commonwealth. It is accordingly suggested that the exclusive original jurisdiction of the Federal Court should be confined to disputes of one kind or another between the Federation and the various States and Provinces. These disputes may involve questions of interpretation of the Constitution or of a Federal Law, or they may arise out of the interpretation of agreements between two or more States or Provinces. The question, however, of agreements between a State and a Province may need reconsideration, and it may be desirable to insert words here or elsewhere which will make it clear that no paramountcy questions can be brought within the purview of the Court.

If the Federal Court is to fulfil its function as guardian of the constitution, it seems desirable that it should have an appellate jurisdiction from the State courts and the High Court in any matter involving the interpretation of the constitution, and that in such cases the direct appeal which at present exists from the High Courts to the Privy Council should be excluded. It is perhaps questionable whether similar exclusive appellate jurisdiction should be given to the Federal Court in matters arising on the interpretation of the Federal law; but it may be thought desirable to do so in order to attain uniformity of interpretation in such matters. It is suggested that the Governor-General might be entitled, if he should think fit, to refer from time to time to the Federal Court questions of a juridical nature on which the opinion of the Court would be of value. An analogy to this power will be found in the provisions of Section 4 of the Judicial Committee Act, 1833, under which His Majesty in Council may refer to the Privy Council any question of public importance. Stopping there for a moment we have had in the last year two such cases from Canada, one raising the question of whether a woman was eligible for sitting in the Senate, and another, in which judgment will be given next

week, as to the position of the States and the Dominion with regard to the regulation of aeronautics.

Sir Muhammad Shafi: Advisory jurisdiction?

Chairman: Yes, advisory. You will hear what I am just going to say. The decision of the Federal Court on such a matter would not be a decision *inter partes* or in itself constitute an enforceable judgment—it is advisory, as Sir Muhammad said—but, at the same time, its opinion would carry great weight, and the procedure has proved to be very helpful on several occasions—two of which I have just referred to.

In the case of the Australian Constitution, appeals to the Privy Council, from the High Court, in matters involving the interpretation of the Constitution, only lie with the consent of the High Court. In the case of India, however, it seems desirable to provide for an appeal as of right in these cases. In cases where no constitutional issue is involved, it may be thought desirable to restrict the right of appeal to the Privy Council; and it is accordingly proposed that the right should only be exercised by leave of the Federal Court, though the right of the Crown to grant special leave would have to be preserved.

Power to make Rules of Court regulating the procedure of the Federal Court, including provisions enabling the Court to sit in more than one division, are necessary, though it is perhaps a question whether the power should reside in the Chief Justice or in the Governor-General. It seems desirable, at any rate, that no Rules should be made without consultation between the two; and so long as that is secured, it is not a matter of the first importance in whose name Rules are in form made. On the analogy of the English Rule Committee, it might be preferable to give the formal power to the Chief Justice.

The Court will require a Registrar and other officials, and the appointment of these officers will require the exercise of considerable patronage. The matter of their appointment is therefore likely to excite considerable attention, and it is suggested that it would be desirable for them to be appointed by the Chief Justice. Inasmuch, however, as questions of expense will be involved, it is clearly necessary that the salaries and numbers of the officials should be subject to the approval of the Governor-General.

It will be necessary formally to provide that Federal, State and Provincial Authorities will accept the judgment of the Court as binding on themselves when they are parties to a dispute before it, and will also enforce the judgments of the Court within their respective territories. It is similarly necessary to require all the subordinate Courts to recognise and give effect to the judgments of the Federal Court.

Now, these are only general remarks. It may interest you to know the form in which these general remarks might appear in a draft Bill: I will read it very rapidly; it will appear on the notes and you will be able to see it in the form in which, if these or

similar suggestions to them meet with your approval hereafter, it would appear in any Bill. Of course, I have to make some sort of provision for blanks, as you will hear.

> "A Federal Court shall be constituted by letters patent consisting of a Chief Justice and not less than ( ) nor more than ( ) other judges"—

You see, it has got to be filled in—

> "appointed by the Crown. There should be a qualification prescribed for the Judges."

Now, we shall have to put in what the qualifications should be.

> "Provisions of salaries and Judges shall be made, and such salaries and Judges shall be a non-voted item in the Budget."

Now, here is the next suggestion:—

> "Judges to hold office during good behaviour and to be removable only by the Crown, but to be subject to an age limit."

I heard a young friend of mine, with rather advanced views, suggest the other day that no Judge ought to be more than 30; but I think that that is perhaps going too far.

> "The sitting of the Court to be at ( ) or such other place or places as the Chief Justice may, with the consent of the Governor-General, from time to time determine."

Now, here comes a matter which I must read very rapidly, because you will get it on the notes—the jurisdiction:

> "The jurisdiction of the Court to be both original and appellate. The Court to have an exclusive original jurisdiction in the following matters (non-justiciable matters to be excluded):—
>
> "(*a*) Disputes between the Federation and a State or a Province in any matter involving the interpretation of the Constitution Act or any Federal law;
>
> "(*b*) Disputes between two States, two Provinces or a State and a Province in any matter involving the interpretation of the constitution or any Federal law;
>
> "(*c*) The interpretation of agreements between the Federation and any State providing for the exercise of administrative powers and any question arising thereunder;
>
> "(*d*) The interpretation of agreements between the Federal Government and a Province or between two States and two Provinces, and any question arising thereunder."

The next question is a little difficult, because of a form of words:—

> "The Federal Court to have an exclusive appellate jurisdiction from all State Courts and Provincial High Courts

in any matter involving the interpretation of or arising under the Federal Constitution or "—

and Sir Tej Bahadur Sapru will kindly consider this portion—

" any matter arising under any Federal law."

I shall want your opinion on that, Sir Tej.

" Provision for special references by the Governor-General to the Federal Court on the lines of Section 4 of the Judicial Committee Act, 1833.

" Appeal to lie from the Federal Court to the Privy Council as of right in any matter raising a constitutional issue, and in other cases by leave of the Federal Court. The right of the Crown to grant special leave for appeal to be preserved.

" Power to Chief Justice, subject to approval of the Governor-General."—

It does not matter which way you put it; you have got to consider the principle:—

" to make Rules of Court regulating the procedure of the Federal Court, including provision enabling the Court to sit in more divisions than one."

" The officers of the Court to be appointed by the Chief Justice, subject to the consent of the Governor-General as to salaries and number."

" Federal, State, and Provincial authorities, as the case may be, to enforce the judgments of the Federal Court, and all Courts throughout the Federation to give effect to and recognise as binding on them the judgments of the Federal Courts."

Sir Tej Bahadur Sapru: I would like to ask two questions In the first place, I assume that this Supreme Court will be what is technically known as a Court of Record

Chairman: Certainly.

Sir Tej Bahadur Sapru: I should like further to ask whether you are going to confine the discussion exclusively to the Supreme Court or open it to the question of the Judicature in India. There are some features of the chapter relating to the Judicature which require very serious consideration. I know that the Government of India are interested in that, and questions have been raised with regard to it in Parliament. If you will give me permission, I will in the course of debate refer to some of the features of the judicial system there, and to the composition of the High Court.

Chairman: I am very anxious that you should do that. The discussion will not be confined merely to the one question. We are very anxious to hear the views of all of you upon that matter, and it will not be a waste of time. A great many of the fears that people have entertained with regard to the Federal Constitution will vanish into thin air if they know that there is a proper Federal Court before

which they can get their rights. I am not saying they are going to be wrong; but I am saying that, in this Federal Constitution, if we get a really strong Federal Court which enjoys a general responsibility, a great many of the fears of the people about the constitution will vanish.

(The Committee adjourned at 12-25 p.m.)

PROCEEDINGS OF THE THIRTY-SEVENTH MEETING OF THE FEDERAL STRUCTURE COMMITTEE HELD ON THE 20TH OCTOBER, 1931, AT 11 A.M.

HEAD 4.

Distribution of Financial Resources between the Federation and its Units.

DISCUSSION ON THE REPORT OF THE FEDERAL FINANCE SUB-COMMITTEE—(*continued*).

Chairman: Your Highnesses and Gentlemen, We adjourned on the last occasion in order to give people an opportunity to see if they could come to some measure of agreement upon what we are to do with regard to the Report from our sub-Committee. I understand you have worked very hard and sat up very late, but I do not know exactly what position you have reached. Am I right in thinking that the underlying principles of the Report may be accepted as a general basis upon which this part of the constitution is to be drafted? I am not talking about any exceptions now: of course, we will have to consider those separately. But as a general basis for drafting the future constitution and giving it to our Parliamentary draughtsmen, do we accept the underlying principles of the Report? I gather that we do.

I think the chief difficulty we had was with regard to this Expert Committee. I quite see that there are some questions which will have to be decided—may I put it, so as not to encounter any opposition—somehow, sometime. Personally, I think the sooner the better. I believe we shall all agree upon that. The question that remains would be this. Accepting, as we do, these underlying principles as the general basis upon which we are to instruct our draughtsmen to proceed, let us consider any special matters which we think want rather more attention and which have to be settled in some way. There, I think, possibly we might get some help from the States. I do not know, for example, what we had better discuss first. Sir Akbar Hydari, I would rather like to ask for your help, if I may, with regard to this. I quite see your point. You want to know where you are, but, with regard to future taxation what exactly is the sort of view that you personally (I will not ask you for the moment as a representative of the States) take up with regard to this?

Sir Akbar Hydari: I think it should be specified.

Chairman: What I rather wanted to ask, too, if I might, was this. We are only thinking aloud. Let me put it, so as not to beg the question, in a very sort of man-in-the-street way. Supposing the Federation found it necessary to get a bit more money; what sort of way do you think, or what sort of procedure, ought to be adopted for that purpose?

Sir Akbar Hydari: My position was that, as recommended by the Finance sub-Committee, there should be an exploration of the budgetary position with regard to revenue and expenditure, with a view to seeing how far the taxes which are mentioned in paragraph 10 will have a hope of producing a balanced Budget by having those taxes as Federal, and those others which are there mentioned as Provincial. We must see whether, after this enquiry, there will be a reasonable hope of producing a balanced Budget. Then you must also specify a couple of taxes as marking the field where further sources of revenue might be obtained in case you wanted that for balancing the Budget. The whole point was only this, that our aim is to start with a thoroughly sound Federal financial system, for which a reasonable prospect of having a balanced Budget is an obvious necessity; and it should be so balanced that truly Federal sources of revenue cover truly Federal expenditure, and that, as far as possible, you eliminate all "Central" heads, because we want a unified Budget.

Chairman: Let me see. I am only thinking now of the sort of way in which we should have to draw up the Report, if you will forgive me for just a moment. One, underlying principles accepted generally as a basis. Now, I suppose we should all agree that it is desirable to have a system which would produce sufficient resources to create a balanced Budget. Is that right? Does anybody object to that, or does somebody think that it is not desirable to have a system which would create a balanced Budget? I am only trying to get it down now; we are not deciding anything. In order to do that, should I be right in saying—I will explain it in a moment—that the Federation should have power to levy certain taxes? There is no doubt about that?

Sir Akbar Hydari: Yes. My Lord, I want to make it clear beforehand that I am now speaking as a member of the Federal Finance sub-Committee and as a member of this Committee, without in any way speaking on behalf of the States as a whole.

Chairman: And I want to make it perfectly clear that I am talking without prejudice, and that this is not to be taken down and brought up in evidence against me. The Federation should have power to impose—I do not like the word "impose," but I will use it for the moment—certain taxes for this purpose, that is, for the purpose of creating a balanced Budget. Now, might I just ask this; those are taxes, of course, which the Federation should have power to impose over all Units of the Federation?

Sir Akbar Hydari: Yes. That is essential to the Federation.

Chairman: That is what I thought, too, but I find that every now and then I am beginning to doubt whether Federation is even spelt with an "F."

Now, the next point about it is this. Do you think that there should be some sort of limitation? Mind you, I am only thinking aloud, and therefore I am not in any way laying things down. Some things may be quite impossible. In some cases, as I expect you know, with us, there are various authorities which have the power to impose taxes or rates, which only have power to impose a limited amount, let us say, for example, a sixpenny rate. Do you think that such a restriction—that is, that they should have power to impose a tax of a certain sort, but not above a certain amount—should be imposed?

Sir Akbar Hydari: It would depend a good deal upon what the exploration of the budgetary position revealed, as to how much you require.

Chairman: I rather agree with that, but I will tell you what was in my mind when I asked the question. Suppose you wanted to make up a deficit, and you had authority to impose taxes of three different sorts—A, B and C. If you had no limitation, you might lump the whole deficit on to A. On the other hand, it might be advisable to say, "No, there are other sources of revenue, and we must, in order to make up any deficit, not go beyond a certain maximum in respect of one tax." To put it in the simplest way, if it were a deficit of 1*s.* 6*d.*, instead of lumping it all on to A, it might be separated into sixpences upon each of the three categories.

Sir Akbar Hydari: There are certain taxes that we have already agreed to federalise, namely, Customs, Salt and Opium. With regard to that I would impose no limits. It would depend entirely upon the conscience or sense of financial propriety of the Finance Minister of the time as to how far he would meet the deficit from each source.

Chairman: I should like to ask that question of the members round this table, whether we should all agree that, in respect of Customs, Salt and Opium, there should be no limit upon the power of a Federal Government. What do you say as to that, Sir Muhammad Shafi?

Sir Muhammad Shafi: I think that is a matter probably for the Expert Committee to decide.

Chairman: I think it is. All I am saying is that we should endeavour to get the opinion of members for the guidance of the Expert Committee.

Sir Muhammad Shafi: I would not in any way limit the judgment of the Expert Committee, in regard to a matter like this, by making any observations upon it.

Chairman: Supposing we were to turn ourselves for the moment into the Expert Committee. I am not pre-judging the question at all. I am not saying that there are not some things that the Expert

Committee should look into. But is not that rather a matter of general principle that we could decide? The Expert Committee would have to go carefully into detail, but this is a general sort of question. For instance, would you feel disposed to refer to the Expert Committee whether it is desirable to have a system which would create a balanced Budget? That, I thought, was not a question for an Expert Committee. I should have thought there were some questions we could, as it were, dispose of now, and that that, for example, is one of them.

Sir Muhammad Shafi: I feel at present disposed to say "Yes."

Chairman: So do I; I rather feel disposed to say "Yes." What do you feel, Mr. Iyengar? Do you feel disposed to say "Yes" or "No" to that?

Mr. Iyengar: We agree it is better to agree straight away on anything you can.

Chairman: Never mind about generalities. We are on the question now of whether there should be no limit on the power to tax Salt and Opium and levy Customs.

Mr. Iyengar: There is no limit now.

Chairman: Then the answer is "Yes," you do agree. Then we are all, I think, agreed on that.

Mr. Joshi: Does the reply of Sir Muhammad Shafi mean that there should be no limit?

Chairman: Yes. Let us get on a little now, because we want to get on as quickly as we can. We have now decided these four things.

Mr. Gandhi: If it is to be said that they are decided, I think I ought to say a word.

Chairman: Do you think there ought to be a limit?

Mr. Gandhi: Not only that, but personally I should resist a tax on Salt altogether, and not merely limit it. I do not think I can say off-hand, moreover, that there should be no limit so far as Customs are concerned. There are many things on which I would say "No, I will not go beyond this." Similarly with Opium.

Chairman: What do you say with regard to Opium?

Mr. Gandhi: Opium I would have limitless.

Chairman: That is good. We are all agreed on Opium anyhow. Now, Mr. Gandhi, with regard to Customs, would you say there should be some limit there?

Mr. Gandhi: I think so.

Chairman: What limit is in your mind?

Mr. Gandhi: I would not take Customs in general; my judgment would vary, and I would not allow an expert to tell me what I should do, because it would be a matter of policy.

Chairman: That means giving the Federal Authority no limit, so that you agree with regard to Customs. We are all agreed on Opium, and we agree on Customs, because you say "I do not want any expert to tell me what I am to do," nor does the Federal Government. Now, with regard to Salt, I know that is rather a difficult question, but we want to get to the heart of the matter now. What do you think should be the position of the Federal Government so far as a tax on Salt is concerned. Do you think there ought to be no tax at all?

Mr. Gandhi: Not only no tax, but the tax which is to-day levied on Salt should go.

Lord Peel: Mr. Gandhi is expressing his individual opinion; but does he suggest that, in the Statute itself, the right to tax Salt by the Federal Government should be expressly excluded?

Mr. Gandhi: I do.

Chairman: Very well; we will make a note that Mr. Gandhi objects to any tax on Salt.

Lord Peel: It is more than that; it is more than a personal objection. He thinks Salt ought to be excluded.

Chairman: He thinks Salt ought to be excluded, yes. Now, Mr. Gandhi, would you help us with regard to this. First of all, can anybody say what the present tax on Salt brings in.

Mr. Gandhi: Six crores.

Sir Akbar Hydari: 6·7 crores, less 1·23.

Mr. Gandhi: I will give in to anybody who says between 6 and 7 crores.

Chairman: Very well, we will say 7.

Sir Akbar Hydari: The Government of India figure would make it about 5·50.

Chairman: Now, Mr. Gandhi, perhaps you will help us in this way. Suppose we were to say "Well, Mr. Gandhi is quite right; there ought not to be this tax," I should like to ask you where are we to get this five millions—taking it at five millions—from. Could you just help us with regard to that? What would you do?

Mr. Gandhi: My answer is that there should be a reduction to the extent of 6 crores from the Military expenditure.

Chairman: The way you want to do things is to reduce expenditure?

Mr. Gandhi: I do.

Chairman: Now, Sir Akbar, what other taxes do you think ought to be included?

Sir Akbar Hydari: There are two or three sources which have been indicated in the Report of the sub-Committee, and one or two were indicated in His Highness of Bhopal's speech; but before I can finally commit myself to them, I should like first of all to have before me the finally examined figures—I will not use the

word "expert," because it seems to be in a way unpalatable to certain people, and it seems to give rise to confusion as to whether these are experts in the rôle of arbitrators, or of explorers or of confirmers—therefore, I say, I should like to have before me the figures, from which I could see how much is required, or will be required, ordinarily to balance the budget, and what these sources are likely to produce.

Chairman: Have you any sort of idea, or guess, that you could give us?

Sir Akbar Hydari: As to figures, I have no idea. I am an absolute ignoramus with regard to that point. But with regard to the specific taxes, these have been mentioned, and they might be looked into as to what their statistical content would be. One is "Countervailing Excise duties on articles on which Customs duties are levied." (I want to emphasise the word "countervailing.") Then, No. 2 is "Federal taxes on Tobacco"—and what else was it, Your Highness?

H.H. The Nawab of Bhopal: We have not specified the subjects.

Sir Akbar Hydari: But they would have to be specified.

Chairman: Have you thought at all what would be the terms of reference to any committee?

Sir Akbar Hydari: With regard to this Committee, Lord Chancellor, I have analysed the functions, which, in different parts of it, the Report says need expert exploration. It seems to me that there are some enquiries which are absolutely necessary *in order to give a definite shape to the schedule of taxes and heads of expenditure* which you will have to bring into the constitution.

Chairman: Would you kindly give us one or two examples?

Sir Akbar Hydari: For instance, this very thing—we say that the future Federal Government of India will be responsible for a budget which has these heads of expenditure, reserved and *non-voted: Military, Political, Frontier wars, Federal expenditure on pensions, non-voted. These are heads of expenditure.* Then there will be unreserved heads, which can be voted upon. I have got the heads here. Then there will be something like this, that these will be met by sources of revenue—Customs, Salt, Opium, Federal Lines of Communication, Federal Currency, and so on. Then there would have to be some enquiry to show whether this will produce a balanced Budget in normal times. If not, then I should also be saying that perhaps the Federal Government should have also at its disposal the following sources of revenue: Excise on such and such articles, Federal monopolies, and such things. We should have to have an enquiry to show whether, although we may be mentioning all these things, there was still sufficient on both sides *of the account to balance each other, but not sufficient to provide that margin of safety which is required in the ordinary fluctuations* of world conditions on which all these depend. We must see whether it is so or not. If it is so, then, so far as the functions of

this Committee are concerned, they have confirmed the general and preliminary lines on which we have tried to allocate in paragraph 10, and the taxes to which we have preliminarily given a tentative assent.

Chairman: Might I just ask you this, because, of course, I have not been present at these enquiries. Is the sort of idea this, then—that this Expert Committee would be able to ascertain (1) the probable amount of receipts that the Federal Government would have at its disposal, and (2) the probable expenditure that the Federal Government would have to meet; and if, as a result of the comparison of the two figures, it was shown that in normal times there might be a deficiency of Y crores, then you would consider what powers the Federal Government must have in normal times over extra taxation so as to make up this probable Y crores deficiency. Is that it?

Sir Akbar Hydari: Extra taxes, X, O, P, Q.

Chairman: Yes, whatever they are. What you say, I suppose, is this. In those circumstances, the States would not be able to have a voice as to what powers they would place at the disposal of the Federal Government in respect of extra taxation or taxation for P, Q, R articles before they enter.

Sir Akbar Hydari: Yes.

Chairman: You have used in all your conversation, quite rightly, the word "normal." I quite agree with you; but some times, as we know to our cost, are abnormal. They are emergency times. Would you be disposed to say that, in times of emergency—I will not say for the moment how these are to be ascertained—the Federal Government should have enhanced powers, or how do you deal with a time of emergency?

Sir Akbar Hydari: The word "emergency" is a very elastic term. If it is an "emergency" of a kind that means an unbalanced Budget from year to year, then I would not call it an emergency. But if there was a war, then, of course, there ought to be a state of emergency; and that was contemplated by the particular paragraph in the Finance sub-Committee's Report. What they wanted there was to get an Expert Committee to say what should be the relative incidence of the burdens imposed on each of the federated Units. But, I think, in the first place, my reply would be that in time of war, in order to make the war a success, we should put forward all our resources, as this country did, and as we ourselves did, in the last war, without counting the cost. Secondly, if any taxes beyond that are required, they should follow the procedure which you will have to consider in regard to doing anything that has been laid down specifically in the constitution.

Chairman: Am I right in thinking that famine relief is a reserved Provincial subject?

Mr. Iyengar: It is a reserved Provincial subject.

Sir Akbar Hydari: It must be the care of each federating Unit to deal with famine.

I should like, if possible, that this Committee should find out the taxes in respect of which we can keep a wide margin, so that, for all practical purposes, even in cases of emergency, the call for the exercise of such powers would be exceedingly rare.

Chairman: What sort of personnel do you envisage for the Committee?

Sir Akbar Hydari. I should say those who are willing to serve *on it of those who constitute the present* Federal Finance sub-*Committee, with the addition of a certain* number of experts to help *them in the collection of* data and so *on.* The matter is really one to which I have not given very careful thought, but those are the lines along which my thought at present runs. If I may say so, *the considered opinion of the experts may be necessary on such points as the yield of a certain tax, and so on.*

Chairman: I should like to suggest this to you. I quite see, of course, the advantage of that; but I suppose that what you are in fact saying is this. You want a fact-finding committee—a committee to find the facts—and not a committee of politicians.

Sir Akbar Hydari: That is so.

Chairman: What you really want to do is this. You really want to find out the facts, and you do not want on a committee like that a gentleman who all his life has been a free-trader or a protectionist, or whatever it may be. You simply want a fact-finding committee.

Sir Akbar Hydari: Exactly.

Chairman: And you say that, when the facts are properly found, then those people who want to come in to the Federation, or the person who has the misfortune to be entrusted with the new Act, will be able, on the ascertained facts to say what the best way of dealing with them is?

Sir Akbar Hydari: Yes, this is my idea.

Chairman: Now, Sir Tej, would you help us on this? I see what the position is, and I am not expressing an opinion; but what do you say on all this?

Sir Tej Bahadur Sapru: So far as Your Lordship's first question is concerned, namely, *whether there should be any limitation of the power to raise taxation in a certain manner or up to a certain point, I would not place any limitation on the power of the Legislature so long as you specify the* subjects on which taxes should be levied. Of *course, the raising or the lowering* of taxation will be *a matter of policy* which will be determined from time to time by the future Executive Government, having regard to all the circumstances affecting the country internally and in its relations with other countries. But by the Statute I would prescribe no limit. That is my answer to the first question.

I believe the next question put by Your Lordship was with regard to this Expert Committee, its functions and its composition. I have myself been anxious, during the last three or four days, to find out what the terms of reference to this Committee are going to be. In the manner in which it has been suggested in the Report of Lord Peel's sub-Committee, it does not appear to me that that Expert Committee is one which I should favour. I am still unrepentant about it. If, however, what is really aimed at is that we should agree upon certain principles of taxation, upon certain principles of revenue, and then ask this Expert Committee to work out the details, I should favour it, so long as you do not further give this Expert Committee any power to lay down principles or to vary the principles which have been laid down by Lord Peel's sub-Committee.

Lord Peel: We did not intend to give them that. I am only speaking for my sub-Committee, of course.

Sir Tej Bahadur Sapru: I am quite prepared to accept that that was your intention, but I can only say that intention has not been expressed in that manner. I interpret that Report really to mean that you are leaving it to the Expert Committee to vary or modify or alter any principles which you have laid down. So far as the principles which you have laid down are concerned, I have not the least exception to take to any of them. I accept every one of the principles laid down by you. But if it is intended that this Expert Committee should vary or modify or alter those principles, then I am entitled to ask one or two questions.

Let us assume that the Expert Committee says that principle A will not work and that they recommend principle B. What is to happen when that Expert Committee has submitted its Report? Are we to be absolutely extinct? And, if so, who is going to decide whether the principle suggested by Lord Peel is going to be accepted, or whether the principle suggested by the Expert Committee is going to be accepted? It is possible to say "Well, that Expert Committee may submit a Report to His Majesty's Government." Very well. Is the Conference as a whole prepared to leave it in the hands of His Majesty's Government? That is really the question, to my mind. Or does the Conference reserve to itself the power of deciding whether it will accept or reject the recommendations of the Expert Committee? If the Conference is to reserve that power, that, to my mind, impiles that the Conference will continue to exist; and if the Conference is going to continue to exist, then you will have to answer the question, when and where is the Conference going to meet? Is it going to meet in Plenary Session, or delegate its powers to a small body?

Chairman: Which do you think?

Sir Tej Bahadur Sapru: Personally speaking, I say that we ought to arrive at certain agreements with regard to certain principles of taxation, making also provision for emergencies. If we agree to those principles, we have got to take our chance. Whether

the yield will be sufficient or whether the yield will not be sufficient is, to my mind, the question which we will have to face not only now but when the Federation has been established and after the Expert Committee has made a Report.

Supposing we establish the Expert Committee, and supposing we are also prepared to accept the recommendations of the Expert Committee, where is the guarantee that, after three years or five years acting upon those principles, we shall not have to face a deficit Budget? Even then we will have to adopt some means of balancing the Budget. We cannot afford to leave our Budget unbalanced. Therefore, the object which this Committee is intended to serve really does not seem to me to be quite so patent. It is rather a question of principle which is dividing us. If we agreed on the question of principle, then I think there could be no quarrel at all about the figures which would be worked out in accordance with those principles. You may have, if you like, in your constitution, special provisions to deal with a situation which may arise when there is a series of deficit Budgets. You may have very special clauses of that character. I will not object to them. But I do not think that this Expert Committee is going to be the sovereign cure for all the ills that may overtake us in future.

Lord Peel: It was never suggested that it should be that; otherwise it would be a miraculous committee.

Sir Tej Bahadur Sapru: If it is not going to give a sovereign remedy for all time to come, and for all contingencies, then I do not think it is going to serve any very great purpose. If it is a question of finding facts and of getting together information, I have no objection at all. But I do not think that that should be the pivot on which the existence or non-existence of the Federation should turn. That is the danger I have in view, My Lord.

As regards the composition, I am quite prepared to accept the claim which has been put forward—that the members of the sub-Committee are already experts.

Sir Akbar Hydari: I have been a member of the sub-Committee. We are not experts, not at all.

Sir Tej Bahadur Sapru: Then you will have a committee of experts plus a number of laymen. Well, I would not call that committee a committee of experts at all. I can take the old members in on the assumption that they are experts and multiply the forces of experts; but I will not have a committee consisting of laymen and experts, and then call that committee a committee of experts. That is all, My Lord, that I desire to say.

Sir Akbar Hydari: I might perhaps explain what I mean when I was speaking about that—and that is that that committee should be a committee of experts with regard to fact-finding, but, in case a situation arose, such as Sir Tej Bahadur Sapru himself mentioned, supposing this Committee thought that an alternative principle was necessary in order to balance the Budget, whose opinion should be before His Majesty's Government before they finally decided what

to put in the Bill—whether to put that alternative principle in the Bill or not. And I thought that perhaps, in view of the claim which has been put forward by Sir Tej Bahadur Sapru, it might be possible to obtain the opinions of these members who have been advising you now—to obtain their opinion as to what they had to say; but I myself will be content to leave the fact-finding committee's report to His Majesty's Government to put whatever provision they consider to be necessary, and have the whole thing discussed in the way in which other provisions will be discussed.

Chairman: Might I just ask you this, Sir Tej, because I can foresee a little difficulty that may arise. Agreeing generally with what has been said, supposing, then, we send this to a fact-finding committee, which I gather you do not think very highly of—you may be right on that; I am not saying you are not; at any rate, we will see that it does not take much time—and supposing that, as a result of the hard facts and the hard figures, when this report was sent to His Majesty's Government it was clear that one of the principles laid down by Lord Peel's Committee, was, through a misapprehension—and they have not had a very long time to do their work—such that, if His Majesty's Government adopted it and put it into the constitution (I am only asking you to accept an hypothesis), the result would be that the Federation would be bankrupt in twelve months? What is to happen then? Are we to stick to the principle and make you bankrupt; or are we to say, "We had better not do that; we had better be quite sure that, by adopting that, we do not adopt a principle which the facts now indicated show will lead us into real trouble"? I can envisage this—I am making no promises and I am making no pledges, but I can quite see that the man who is in charge of all these negotiations in future might very well write to you and write to other people and say, "Now, look here; as a result of the finding of the facts, we find that this principle won't wash." I suppose then that anybody would say at once, "Oh, well, that cannot be done." There is no reason why people should not be consulted. All I am envisaging is this: What is to happen—I do not think it likely to happen—supposing the facts show that the principle wants modifying? Would you then say, "I do not care twopence for the facts; there is the principle of Lord Peel's Committee; *coûte qui coûte, ruat coelum,*" and all that sort of thing? I think we ought to have some sort of idea for meeting a situation like that. I do not think it will arise, but is it wise to take a decision now which further investigation might show the awkwardness of acting upon?

Sir Tej Bahadur Sapru: Suppose a situation like that arises, one of two consequences must follow. Either the Federation will go by the board, and the Expert Committee will practically have finished the work, because it will be open for any of the federating Units to say "We will not enter the Federation under these circumstances"; or, if you are serious about the Federation, you will have to devise some machinery again for getting the opinion and the consent of the different Units. There is a third possibility.

You can say, "We, as His Majesty's Government, will make a decision later, not at this Conference"; but that will not be an agreed decision, it will be an imposed decision.

Chairman: Then I gather you do not want His Majesty's Government to impose any decision?

Sir Tej Bahadur Sapru: So long as it is possible for us to arrive at an agreement I will stand by that agreement.

Chairman: But if it is not possible, you still do not want His Majesty's Government to impose an agreement?

Sir Tej Bahadur Sapru: If it is not possible, then His Majesty's Government have to discharge their own functions and responsibility in the way they can best.

Chairman: Will Mr. Zafrullah Khan tell us what he thinks about the general question?

Mr. Zafrullah Khan: On the general question which has been last put by Your Lordship, if the Expert Committee came to the conclusion that, facing the hard facts and the hard figures, some of the principles laid down have to be modified, I suppose the situation would have to be faced again, and it would have to be seen whether those who desire to come into the Federation are willing to modify those principles.

Generally, with regard to the questions to be submitted to the Expert Committee, and as to how and in what stages the Expert Committee is to function, I agree with what is stated in the Report. I do not want to go over that again. It was only in regard to certain matters outside the Report that I wished to make some submissions.

Lord Peel: I only want to say two words on this matter. One is that I was rather pleased to find that really the differences of opinion even about the "Committee of Competent Persons" (if I may so term it, in order to use a more pleasant expression) are not so great as might be feared—even on this subject there seems to me to be a good deal less gap, shall I say, between the opinions which have been expressed before and those expressed to-day. I really do not think there is a very wide margin of difference.

I should like further to say—perhaps I ought to say to repeat, because I have partly said it before—that we have been, I think, rather misunderstood as a sub-Committee. Whether it is due to the form of words I do not know, but certainly our meaning has been slightly misunderstood. We did not in the least intend that this "Committee of Competent Persons" should set aside the principles at which we have arrived. What we felt was that there were many facts and figures which we had not got at the moment, and which could very easily be supplied either in India or here, and which, if they were got together in the proper form, would enable people to see exactly what was the effect of the principles which we laid down.

When the question arose about altering a principle, I did suggest a modification which was, I think, accepted generally by the sub-Committee. If we erred at all, we really erred on the side of too much caution; but we did feel that, if on a careful examination of one of these principles which we laid down it was found, from the facts and figures, that it would be very difficult to apply, we did not want to tie up these competent persons too much; and we thought they might make a suggestion which would get out of the difficulty on other lines. That was as far as we went. It would have been derogating, as it were, our own dignity, if we had suggested that we wanted to commit these matters to a "Committee of Competent Persons" who were going to play about with all the principles which were laid down. Nothing was further from our thoughts.

The suggestion I was going to make was this, Lord Chancellor. I do not know whether it will meet with your approval or with that of the members of the Committee. But, having reduced the difference to such minute proportions, would it be possible, do you think, that this matter should be adjourned say for twelve or twenty-four hours in order that you or others might bring forward a form of words—I do not like to see the word "formula" because it has been so much abused—which would really meet the difficulty? I really think it is a matter, not of substance, so much as of form: and I think it would be quite possible to find some form of words for reference to the Committee, or some limitation of the functions of that Committee, which I think might meet with the approval generally of all concerned. It does seem to me rather a pity, after this Committee has accepted the principles on which the Report was founded—in fact all its principles—that there should be any delay or any misunderstanding of any sort about such a comparatively minor matter as the exact way in which this "Committee of Competent Persons" is to carry out its duties. If it would meet with your view, might I suggest that this discussion should be adjourned until whatever time you think right—for twenty-four or forty-eight hours, whatever it may be—in order that a proposal might perhaps be put forward which would reconcile the different views.

Sir Tej Bahadur Sapru: I support Lord Peel's proposal for an adjournment.

Sir Akbar Hydari: I entirely agree with what Lord Peel has said. He has put much more clearly than I could have done what I had in my own mind.

Mr. Gandhi: Lord Peel, will you oblige us by undertaking to frame a concrete formula? If you do not, then it might be nobody's business, and we shall get nowhere; but if you would guide us by giving us a concrete formula which we might discuss, I would gladly welcome your suggestion.

Lord Peel: I think I can say that, whether through the Chairman or through some other member of the Government, the Govern-

ment would be prepared to put forward a proposal for the consideration of the Committee.

Mr. Jinnah: As I understand it, your proposal is only as to the terms of reference?

Lord Peel: I do not want to limit it exactly to the terms of reference, but as to what should be the actual operation and the scope of the work of this Committee. I put it in more general language. I do not want to limit it too closely.

Mr. Jinnah: It assumes that it must be referred to a Committee.

Sir Samuel Hoare: I should have preferred, myself, not to have made any definite assumption at the moment. I should have thought much the best plan was for Lord Peel, or whoever it may be, to have a talk with one or two representative people, after this meeting to-day, to see whether we could not put forward proposals that would meet with, anyhow, a general body of agreement in the Committee here. I would prefer to-day not to tie myself down too much to dotting the i's and crossing the t's. It may be we shall fail If we do, it is without prejudice. We are not going to attempt to impose our view upon anybody who does not take it. It is open, when we meet again to-morrow, or whenever it is, for people to express their own individual views. But, I think, if we left it at the point which Lord Peel just suggested, there is a chance of getting agreement. I would not put it higher than that.

Sir Provash Chunder Mitter: I may say that I agree entirely with Lord Peel's suggestion; but, if I say one word to-day, my sole object is this. I have already suggested that you should not keep on a statutory basis Export duties, because 92 per cent. of them is paid by my Province and only 8 per cent. is paid by others. I should not keep them on a statutory basis; but I have no objection to the Committee investigating the question, whether the Committee be a fact-finding Committee or whatever the nature of the Committee be. I have already submitted a note to that effect: but it is necessary that any deficit should be met. I have subsequently put in a note showing, not only how the deficit can be met, but how certain other constitutional difficulties can be met. All I am asking for to-day is that the second note also should be submitted to the Committee. If they are accepted, both should go before the Committee.*

HEAD 8.

The Federal Court—(continued).

Sir Muhammad Shafi: Lord Chancellor, Some eight years ago, when occupying the position of Law Member in Lord Reading's Government, I recorded a memorandum advocating the early establishment of a Supreme Court in India. That memorandum was

* The discussion on Head 4 was concluded in the course of the 30th Meeting.

the outcome not only of my anticipations regarding coming events, but also of what I can best describe as judicial necessity—a phrase the meaning of which will become clear as I proceed further with my observations on the subject. At that time there was a school among our lawyer-politicians in India which preferred the unimpaired continuance of the jurisdiction which is at present exercised by Their Lordships of the Privy Council over our Indian Courts to the establishment of a Supreme Court in India. But such has been the rapid change in the political conditions and constitutional ideals in India during the post-war period that now, at this moment, there is practical unanimity among all schools of political thought in favour of the early establishment of a Supreme Court. And what has occurred in these historic halls since the commencement of the Round Table Conference has, I venture to submit, clinched the matter.

If I may say so, Yord Lordship, with that characteristic lucidity and precision which is all your own, has described the position in the first paragraph of the Memorandum which you circulated among the members a few days ago. There you have stated:—

> "In a constitution created by the federation of a number of separate political units and providing for the distribution of powers between a Central Legislature and Executive on one hand and the Legislatures and Executives of the Federal Units on the other, a Federal Court appears to be an essential element. Such a court is needed to interpret federal laws and compel obedience to them, and more particularly to interpret the Federal Constitution itself. The delimitation of the respective spheres of the Federal and the Provincial and State authorities, whether legislative or executive, will be most conveniently entrusted to a tribunal independent both of the Central, Provincial and State Governments, and it would in any event be required in order to prevent the mischief which might otherwise arise if the various High Courts and State Courts interpreted the Constitution in different senses, and thus made the law uncertain and ambiguous."

It is for these reasons, I presume, that a Supreme Court is an integral portion of the constitutions of all those countries which have adopted the federal system for purposes of government.

In these circumstances, it is not necessary for me to dwell further upon the *a priori* reasons for the establishment of a Supreme Court for India. What we have to concentrate our attention upon mainly is the range of jurisdiction which the Supreme Court is to possess. In determining this range of jurisdiction, I would not limit my horizon to the immediate requirements or even to what may be described as the near requirements of the case. I visualize the period when the proposed all-India Federation will have risen to its full stature—when the various constituent Units, as a result of the actual working of the new constitution, will have begun to

entertain the fullest confidence in the legislative, executive and judicial machinery of the Federation, and to regard it as their very own. It is true that, at present, the ruling Princes are somewhat nervous about the position that may be created as a result of the establishment of a Supreme Court in India having extensive jurisdiction over the whole of the Federation. I venture to think, however, that the time will come when, as a result of the actual working of the new constitution, the Princes will begin to have *more confidence in this Supreme Court as the highest judicial* tribunal in India. They will realise that, their prerogative of mercy being in no way affected by the existence of the Supreme Court, it is in the best interests not only of British India but of Indian India—of the country as a whole—that the Supreme Court should have jurisdiction, original and appellate, in regard not only to the constitutional matters which will be properly within its jurisdiction, but also to other matters, civil and criminal, to which I shall refer later on.

Now, what is the position which the Supreme Court occupies in other federal constitutions? According to section 1 of Article *III of the Constitution of the United States of America, the judicial* power of the United States is vested in one Supreme Court. Similarly, section 71 of the Australian Constitution lays it down that the judicial power of the Commonwealth shall be vested in a Federal Court, to be called the High Court of Australia. According to *section 2 of Article III, the Supreme Court of the United States* of America has both original and appellate jurisdiction, as has also the Australian Supreme Court under sections 73, 75 and 76 of the Australian Act. Similarly, the South African Supreme Court has both original and appellate jurisdiction, as specified in sections 96, 98, 103, *104 and 105 of the South African Act. In the United* States of America, the jurisdiction of the Supreme Court extends, *inter alia*, to all cases in law and equity arising under the Constitution, the laws of the United States and other matters specified in section 2 of Article III. Articles 110 and 111 of the Swiss *Constitution vest the Supreme Court of Switzerland with civil jurisdiction*, and Article 112 with criminal jurisdiction, to the extent specified in those articles. Section 73 of the Australian Act confers a wide civil and criminal appellate jurisdiction on the Supreme Court of that Dominion. Similarly, section 104 of the South *African Act invests the Supreme Court of the Union with civil* and criminal appellate jurisdiction. I venture to think that these significant facts have to be borne in mind when deliberating on the nature of the jurisdiction which our own Supreme Court ought to *possess, the principle being that, consistently with the conditions* of India, the jurisdiction of our Court should, as far as possible, be analogous to that possessed by the Supreme Courts in other federal constitutions.

Having said so much, I propose to invite the attentoin of the Committee to one or two preliminary points before coming to crips

with the problem before us. The Lord Chancellor, in his Memorandum, paragraph 7, has observed as follows:—

"The above suggestions contemplated a Federal Court exercising in general only an appellate jurisdiction in federal matters, both from the British-Indian Courts and from the corresponding State Courts. There are, however, a certain number of subjects with regard to which it would be necessary to consider whether the Federal Court should not also possess an original jurisdiction. Among the matters in which the Australian High Court has, or has been given by the Commonwealth Parliament, an original jurisdiction are those (1) arising under any Treaty; (2) affecting Consuls or other representatives of other countries; (3) in which the Commonwealth is a party; (4) between States, or between residents of different States, or between a State and a resident of another State; (5) in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth; (6) arising under admiralty or maritime jurisdiction; and (7) relating to the same subject-matter claimed under the laws of different States. These are not dissimilar to those matters which are within the exclusive jurisdiction of the Federal Courts of the United States; but, in Australia, the State Courts have a concurrent jurisdiction with regard to them, save in so far as the Commonwealth Parliament has excluded that jurisdiction by virtue of powers reserved to it by the Constitution. Whether or not it might be desirable to reserve an analogous power in the future to the Indian Federal Legislature, it seems clear that no good reason exists for depriving the British Indian Courts or the Courts of the States of original jurisdiction in any of the above matters (with perhaps one exception) when they arise in the federal sphere, subject always to the right of appeal to the Federal Court. The one exception which will require consideration is that of disputes in federal matters between the Federal Units themselves or between the Federation as a whole and one of the Federal Units."

With these observations contained in the Memorandum I find myself in entire agreement. I see no reason why jurisdiction over matters mentioned in this part of the Memorandum should rest exclusively in the Supreme Court, and why our Indian High Courts should be deprived of jurisdiction to deal with those matters.

The next point to which I wish to invite attention is that mentioned by the Lord Chancellor in his Memorandum, paragraph 6:—

"On the assumption, then, that there will be only a single Federal Court with a jurisdiction confined to federal matters, the choice would lie between (1) giving the High Courts or other specified Courts, in British India, and the corresponding State Courts in the States, an original jurisdiction in all, or practically all, federal matters. . . ."

I may here mention that His Lordship has defined federal matters in paragraph 9 of his Memorandum, and, as members of the Committee have all read the Memorandum, I need not refer to that paragraph—

> " *federal matters with a direct or ultimate right of appeal to the Federal Court, and (2), following the Australian model giving the Federal Court an original jurisdiction in federal* matters, with power, however, to the Federal Legislature, if it should later on think fit, to invest the British Indian courts and the corresponding State courts with a federal jurisdiction (with a right of appeal to the Federal Court), and to define the extent to which the jurisdiction so vested in any Court shall be exclusive of that which belongs to or is vested in those other Courts. On practical grounds the first alternative appears to be by far the more convenient, but it would seem necessary as a corollary to provide that all appeals *in* British India *in federal* matters *shall go to the Federal Court* . . ."

Here I would interpose just these words—" in the first instance."

> " instead of to the Privy Council, in order to obviate the difficulty which at one time arose in Australia when, on important issues, the Privy Council and the Australian High Courts gave conflicting judgments according as an appeal has gone to one or the other tribunal."

I find myself in complete agreement again with these observations, and venture to think that the first of these two alternatives is the one most suitable to be adopted in India.

Coming now to the question of the original jurisdiction of the Supreme Court, I *would divide this head of discussion as follows: No.* 1, what I *would call ordinary original jurisdiction of the* Supreme Court. This jurisdiction would *cover the* matters mentioned by the Lord Chancellor in paragraph 8 of his Memorandum. This is what His Lordship said:—

> " For disputes such as those mentioned above (*i.e.*, between Federation, State and Province *inter se*), neither existing British-Indian Courts nor State Courts would be an appropriate or indeed a possible tribunal. It can scarcely be doubted that such disputes will, from time to time, arise, and it seems necessary that they should be cognizable only *in the Federal Court itself. Difficulties may well occur in this connection with the States, but should not be insuperable, at any rate so far as regards disputes between State and* Province. *More difficult* problems, however, are *likely to* arise in relation to the decision of disputes between the Federation itself and one of the States."

Admitting the possibility of these difficulties, I venture to think that the matters mentioned by His Lordship in this paragraph of his Memorandum are such that jurisdiction in connection with them must obviously vest in the Supreme Court and in the Supreme Court

alone. Personally, I have no doubt whatever that a time will come and perhaps come fairly soon, when the Indian States themselves will prefer that questions arising between the Federal Government and themselves, or between State and State, should be decided by the Supreme Court rather than by the Foreign and Political Department of the Government of India. I have had some experience of the actual working of the existing system, for I was for two years, as Law Member, an *ex officio* member of the Standing Committee of the Chamber of Princes. Apart from that experience, my learned friend, Sir Tej Bahadur Sapru, will be able also to throw some light on this matter, for he and I were both Law Members for two years. During my term of office I remember only two cases which were referred to me as Law Member for opinion by the Foreign and Political Department.

Sir Tej Bahadur Sapru: Sir Muhammad Shafi was more fortunate than I. I was inundated with cases from that Department.

Sir Muhammad Shafi: If I may say so, I entirely agree with the observations made by the Lord Chancellor in this paragraph of the Memorandum. But I have one or two other observations to make in this connection. Presumably, suits covering these disputes will ordinarily be heard in the first instance by a single Judge of the Supreme Court. Provision should be made, in my opinion, for an appeal to a Division Bench of two or more Judges, as the Chief Justice may direct, against the decision of the single Judge, who originally decided the case. Further, appeals to the Privy Council with or without Certificate should be provided for, in my humble judgment, as this Committee may decide. Personally, I am of opinion that, should the Division Bench reverse or modify the judgment or decree, or order of the single Judge, appeal to the Privy Council should lie as of right. On the other hand, if the judgment, decree, or order of the single Judge is confirmed on appeal by the Division Bench, then further appeal to the Privy Council should be permissible where there is a Certificate.

Chairman: You are referring to cases in which there is a concurrent finding.

Sir Muhammad Shafi: Yes. Of course, the right of the Crown to grant a special leave for appeal will have to be preserved as at present.

The next species of jurisdiction which, I venture to submit, the Supreme Court ought to exercise has been described in legal literature as advisory jurisdiction. The Committee may be aware that Article 14 of the Covenant of the League of Nations after making provision for the establishment of the Permanent Court of International Justice at The Hague, and defining its general sphere of action, proceeds as follows:—

> "The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly."

Here, *in* England, under Section 4 of the Judicial Committee Act of 1833, His Majesty in Council may refer to the Privy Council for opinion any question of public importance. On the analogy of these provisions, and in view of the political conditions obtaining in India, I am of opinion *that the Governor General ought to have power to make a reference* to the Supreme Court on the lines of the English Act. *Of course, whenever Governors in any Provinces in* view of any questions that may arise within the limits of constituent Units, wish to have a question referred to the Supreme Court, they can move the Governor General, and through the Governor General, *if he thinks fit, the question can be referred* to the Supreme Court. But ought this power of reference to be limited to the Governor General alone? That is a question in connection with which, with Your Lordship's permission, I wish to make a few observations. Assuming that a measure has been introduced in a Legislature, *Federal or Provincial, and objection* is raised that the Bill, *or any* part thereof, infringes the provisions embodied in the constitution itself regarding fundamental rights, the President of the Council will, of course, have to give his ruling upon that objection. But assuming that he overrules the objection and the majority of the *members representing the particular community affected by this* alleged infringement of fundamental rights insist on the questions being referred to the Supreme Court, ought there not to be a provision in the constitution providing for such a case as this? I venture to submit that the constitution ought to provide for what *is to happen upon the arising of such a contingency, for, if the* question is settled on the advice of the Supreme Court there and then, the result will be that a great deal of trouble, not only to the people of India themselves, but to the Courts in India, will be avoided. Otherwise, if action is taken under such an enactment, *it would be open to any member of the public to institute a suit* in Court and to question the validity of the Act on the ground that it infringed the provisions of the constitution regarding fundamental rights; and the question would then have to be fought out.

Chairman: What you have said supposes the Act to have been passed, and you then say it would be open to any Federal subject to move the Court for a declaration that an Act is *ultra vires*—*rather like our procedure under Order XIV. I did not quite follow,* because my attention was distracted for a moment, but did you suggest that, when a Bill was proceeding to an Act, and before the Act was passed, there should be some right then for somebody . . .

Sir Muhammad Shafi: May I state the position again? What I said was that if, on the introduction of a Bill in any Legislature, *objection is taken that the Bill, or any portion thereof, constitutes* an infringement of the provisions embodied in the constitution regarding fundamental rights, then, if the President of the Council overrules the objection but a majority of the members representing the particular community affected by the *Bill* insist upon the question being referred to the Supreme Court, the President of the

Council should have the power to refer it for the opinion of that Court.

Sir Maneckjee Dadabhoy: And suspend the debate?

Sir Muhammad Shafi: Naturally. The debate meanwhile would be suspended.

Chairman: Mr. Gandhi asks whether it should be made compulsory on him to do it, or that he should only have the power to do it. Is it "may" or "shall"?

Sir Muhammad Shafi: If the majority of the members representing the community affected by such a law insist upon the reference, it should be compulsory on the President.

Chairman: Supposing the Bill is an omnibus Bill of, say, 12 parts, and that this *ultra vires* point only refers to something in the eleventh part of the omnibus Bill, you would only suspend the discussion upon that particular part? You would let the rest go on?

Sir Muhammad Shafi: Quite so.

Mr. Joshi: Is there going to be any time limit within which the validity of an Act passed by the Legislature can be challenged?

Sir Muhammad Shafi: Mr. Joshi has not understood me. When a Bill is introduced into the Legislature, no question of time limit arises. I would refer Mr. Joshi to the Indian Limitation Act.

Sir Provash Chunder Mitter: Six years?

Sir Muhammad Shafi: I think Mr. Joshi was referring to the stage when the Bill had become an Act.

Mr. Joshi: Yes.

Chairman: Supposing somebody, in the first year of the Act, happened to have a law-suit which depended upon a clause which he said was *ultra vires*; then he would be entitled to ask the Court to say that that clause was *ultra vires*. I quite understand that. But supposing the gentlemen in question did not have a law-suit until 15 years after the Act came into force . . . . .

Mr. Joshi: That is my point.

Chairman: . . . . . and then the 15th year came along, and he had a law-suit, and he said "I never had an opportunity before of saying what an *ultra vires* Act this is." What about that? Ought you to say "You ought to have had your law-suit long ago?"

Sir Muhammad Shafi: If I may venture to say so, with all respect, that question is entirely irrelevant to the submission I was making. My submission was that if, on the introduction of a Bill in a Legislature, such an objection were raised, in the circumstances described by me, it should be obligatory on the part of the President to make the reference. This particular question which you raise has nothing to do with that.

Chairman: I think what Mr. Joshi wanted to ask was this. When the Bill has become an Act—that is to say, if there has been no objection to it—it is open to anybody, to any subject, to ask

then for a declaration that that particular section is *ultra vires.* But I think what Mr. Joshi wants to know is this. It may be all right to say that nobody should be entitled to bring a suit for a declaratory judgment after six years, but would you shut out a person who finds himself, so to speak, upset ten years afterwards by the fact that an Act is *ultra vires,* or would you make a limitation then?

Sir Muhammad Shafi: If I may venture to say so, it is open to the Legislature to make a provision to meet such cases under the Indian Limitation Act, either by addition of an article or by modification of an article.

Chairman: Thank you. That answers you, Mr. Joshi.

Sir Tej Bahadur Sapru: In other words, I take the position to be that an Act which may be, upon the interpretation of the constitution, void, becomes perfectly valid by lapse of time.

Sir Muhammad Shafi. Quite.

Mr. Joshi: You will remember that the Trades Disputes Act was challenged many years after it was passed.

Chairman: Yes, I knew you were on that point.

Sir Muhammad Shafi: Coming now to the question of an appellate jurisdiction, that appeals should lie to the Supreme Court in all Federal matters, as defined by Your Lordship in paragraph 9 of your Memorandum, is indisputable, and I need not dwell upon that. It is obvious that the very reason for the existence of a Supreme Court, in so far as Federal matters are concerned, is that it should have exclusive jurisdiction in certain cases already mentioned, and final jurisdiction in other cases, regarding Federal matters. But the question arises whether the Supreme Court ought also to have civil or criminal jurisdiction in matters other than Federal; and it is here that I propose to describe what the actually existing position is with regard to both civil and criminal matters. Now, taking the question of civil appellate jurisdiction in non-Federal matters first, I have already shown that the Supreme Courts of the United States of America, Australia and South Africa are invested with civil appellate jurisdiction. There is no *a priori* reason why our Supreme Court should not possess such jurisdiction. But I go further, and I say that, in view of the existing position in India, it is what I characterised as a judicial necessity that our Supreme Court should possess civil appellate jurisdiction. Now, according to the existing law, which is embodied in sections 109 to 112 of the Civil Procedure Code, read together with Order XLV of the First Schedule to that Code, an appeal lies as of right to the Privy Council against a decree or final order in any suit of the value of Rs. 10,000 or upwards, or when the decree or final order involves directly or indirectly some claim or question to or respecting property of like amount or value and the High Court reverses or modifies the decree of the original court. In such a case, an appeal lies as of right to Their Lordships of the Privy Council. In other cases an appeal lies if the High Court certifies that a

substantial question of law is involved in the case. That is the position at present. Now, in order to prefer an appeal against the judgment, decree, or final order of the High Court in India to Their Lordships of the Privy Council sitting in London, six thousand miles away, what has the litigant to do? He has first to take certain steps in the High Court itself. Secondly, he has to pay for the printing of a new paper-book in the case. Thirdly, he has to instruct a solicitor, and through him one or more counsel, to argue his case before the Privy Council. Lastly, he cannot avail himself of the help of his own lawyer in India, who may have conducted his case from the day of its inception, unless he is a millionaire who can afford the expenses of the lawyer— his passage from India, his expenses in London, and so forth. These being the actual conditions, what is the result? The result is that, in the majority of cases—I might go as far as to say in the vast majority—decided by the High Court, there is actually no appeal brought to the Privy Council.

Chairman: Roughly speaking, taking an ordinary case in the Privy Council that lasts one day, and in which ordinary—not fashionable—counsel have been instructed, what is the cost of the appeal?

Sir Sultan Ahmed: Two hundred pounds would be a fair estimate for the day's costs.

Chairman: From the time you decide to appeal until the moment that your counsel gets up before the Privy Council and says, "I appear for the appellant," what is the cost?

Sir Tej Bahadur Sapru: Very much more.

Chairman: Mr. Gandhi tells me it is nearer £2,000.

Sir Sultan Ahmed: On the first day, when you ask for leave to appeal, the costs may be £150, and when the case comes on for hearing £200, thus making £350; and the solicitors' fees and other expenses would bring it up to £600.

Sir Muhammad Shafi: That is nearer the correct estimate.

Sir Tej Bahadur Sapru: It is anything from £400 to £600 at the very lowest.

Sir Muhammad Shafi: I forgot to mention that the litigant in India who wishes to prefer an appeal to Their Lordships of the Privy Council against the judgment of the High Court has also to make a cash deposit in the Treasury of a sum fixed by the rules framed by the various High Courts for the costs of his opponents.

Sir Tej Bahadur Sapru: Rs. 4,000.

Sir Muhammad Shafi: The result is that, to the ordinary Indian litigant, an appeal to Their Lordships of the Privy Council is almost prohibited by reason of the excessive cost. That is the existing position in India. I venture to submit that, for the transitional period, the Supreme Court in India ought to be invested with power to hear appeals in all cases of any value up to one lakh of rupees.

Cases of higher value should, *during the transitional period, still* continue to be heard by the Privy Council.

Sir Maneckjee Dadabhoy. Whether a question of law is involved or not?

Sir Muhammad Shafi: Yes

(The Committee adjourned at 1-10 p.m. and resumed at 2-30 p.m.)

Sir Muhammad Shafi · Lord Chancellor, I hope that Your Lordship will pardon me if I go back just for a minute in order to remove a possible misapprehension. When I said that, during two years, only two cases from the Political Department were sent to me for an opinion, I did not refer to cases generally, but to cases the jurisdiction in connection with which we propose to give to the new Supreme Court—that is to say, disputes between the Government of India and the Indian States.

There is *another aspect of the point which was under discussion* when the Committee adjourned before lunch to which I wish to *invite Your Lordship's attention. There* have been *conflicts of* judgment on questions of law between the various Indian High Courts, and Courts subordinate to a particular High Court are bound to follow the rulings delivered by the High Court of their own Province, with the result that there is, here and there, with reference to questions of law, diversity in different Provinces. With the establishment of a Supreme Court in India, this state of things will vanish, and uniformity of laws will result. That is another ground in support of the early establishment of a Supreme Court in India and of vesting it with civil appellate jurisdiction.

I next come to the question whether the Supreme Court should be invested with criminal appellate jurisdiction or not. From certain references which I made to the constitutions of other countries towards the commencement of my speech, the Committee has seen that, in the United States of America, Switzerland, Australia and South Africa, the Supreme Court possesses criminal appellate jurisdiction. Moreover, it seems to me that here again judicial necessity in India requires that the proposed Supreme Court should be invested with criminal appellate jurisdiction. What is the existing position with regard to appeals in criminal cases under the present law in India? In all cases of conviction by Magistrates and Assistant Sessions Judges there is an appeal, in certain cases, to the District Magistrate, and in others, if the *sentence* awarded is for four years or under, to the Sessions Judge. The order of the Court, whether it be the District Magistrate or the *Sessions Judge, is subject to revision by the High Court.* The revisional powers of the High Court are very wide; indeed, those powers are limited only by the practice of the High Court itself. So far as the language of the Statute is concerned, there is no limit to those powers, except in one respect, with reference to which I shall have something to say later on. On the other hand, in convictions by the Sessions Judges, in all cases exclusively triable

by them, including cases of murder, involving sentence of death, and in all other cases where the sentence exceeds four years, the decision of the High Court on appeal is final. The Privy Council have over and over again pointed out that they are not a Court of Criminal Appeal, and have deprecated the presentation to them of such appeals. That is a position, I venture to submit, which is very incongruous. In the more serious cases, where the sentence awarded may even include the sentence of hanging, there is just the one appeal to the High Court, and the orders of the High Court are final; while, in ordinary cases triable by Magistrates in which the sentence awarded is four years or less, there is an appeal, and after that appeal there is remission to the High Court.

In this connection there is one point which is particularly noteworthy. According to the Criminal Procedure Code, the Local Government may make an appeal to the High Court against an order of acquittal. Cases have happened in India where, on appeal by the Local Government against an order of acquittal, the High Court have converted the acquittal into a conviction, and men have even been hanged in those circumstances, in spite of the fact that the Judge, who had the witnesses before him and had heard the whole of the evidence, had decided on acquittal, possibly in concurrence with the opinion of the Assessors—which opinion is not, however, always binding on the Judge. On an appeal to the High Court by the Local Government, the High Court have not only convicted the accused person, but sentenced him to death; and there is no remedy under the existing criminal law, except the submission of a petition for mercy to the Government. The order passed by the High Court on appeal in such cases is in its essentials not an appellate order, but an original order, and it is by that order that he is convicted and sentenced.

Chairman: In a case like that, does the High Court see the witnesses again or simply act on depositions?

Sir Muhammad Shafi: It merely hears the argument of counsel. For 39 years I have been practising in the Courts, often in cases of this kind, and I have known many cases in which an acquittal has been converted into a conviction, and transportation for life or capital punishment has followed.

Chairman: I suppose there is an appeal on fact as well as on law?

Sir Muhammad Shafi: Yes. I remember one case in which, not on an appeal by the Local Government, but on a petition for revision instituted by the relations of the man who was supposed to have been murdered, a Divisional Bench of the High Court at Lahore, consisting of a member of the Indian Civil Service and a gentleman promoted from the Provincial Service, actually set aside the order of acquittal and convicted the accused person and sentenced him to be hanged, in spite of the special provision in the Criminal Procedure Code that this cannot be done on revision. Section 439 (4) of the Criminal Procedure Code unequivocally and clearly lays down

that, on revision, the High Court cannot convert an order of acquittal into one of conviction; but, ignoring even this specific provision, in this particular case, the Court set aside the order of acquittal, convicted the man of murder and sentenced him to be hanged.

Chairman: Was attention drawn to that?

Sir Muhammad Shafi: A petition for mercy came up to the Viceroy, and of course this point was noticed, and ultimately Lord Reading ordered the man to be released; but in law the conviction *still stands against* him. I venture to submit, therefore, that to meet cases of this kind, and particularly murder cases, the Supreme Court should be invested with appellate criminal jurisdiction.

Sir Sultan Ahmed · Do you suggest that in all cases there should be a second appeal to the Supreme Court?

Sir Muhammad Shafi: Whether the appeal to the Supreme Court is to lie on both facts and law, or is to lie only on questions of law, is a different matter. What I am suggesting is that, in all cases where on appeal by Government an acquittal has been converted into a *conviction, there should be an appeal of right to* the Supreme Court. In other cases, and in murder cases in particular, there ought to be a possibility of further relief being obtained from the Supreme Court. Whether the jurisdiction of the Supreme Court in regard to these appeals should be limited to questions of law only, or whether they should have a right to interfere both on facts and law, is a different matter altogether.

I might mention in that connection that under the existing law, as I said, the power of revision exercised by High Courts against appellate judgments is unlimited, and there are various reported judgments of various High Courts that, in the exercise of that revisionary jurisdiction, High Courts are not limited to grounds of irregularity of procedure or illegality of conviction, but that they can go into the merits of the case in order to satisfy themselves that the man's conviction is correct. If, under the existing law, that is the position, namely, that the High Court can, *in the exercise of its* revisional jurisdiction, go into law and fact, I do not see any reason why, in murder cases in particular, the Supreme Court should not have that power. This is what I have to submit to the Committee *in connection with the question* of jurisdiction.

I now come to some of the other points which Your Lordship has *mentioned both in the Memorandum,* as well as in your speech the other day. Of course, provision should be made in the constitution to make the orders passed by the Supreme Court effective in the sense that they are carried out by the Governments, whether Central Provincial, or otherwise. If a civil appellate and criminal *appellate jurisdiction is given to the Supreme Court, orders passed* in ordinary civil appeals and in criminal appeals should also be carried out.

Your Lordship's first question refers to the size of the Court. In my opinion, the Court, to begin with, should consist of a Chief Justice and five or seven Judges. I think a larger number of Judges to begin with is unnecessary, and that a smaller number would not meet the requirements.

The next question is with regard to the qualifications to be prescribed for the Judges.

Sir Sultan Ahmed: Sir Muhammad Shafi says that the Court should consist of a Chief Justice and five or seven Judges. He, of course, has taken into consideration his point that there should be a second appeal in criminal cases in which the death sentence has been passed, and also that cases of the value of below a lakh of rupees may come up to the Supreme Court? He has taken both those into consideration?

Sir Muhammad Shafi: I have. In regard to this question of qualification, I am emphatically of opinion that these qualifications should be limited to legal ability and experience, and should be irrespective of locality or anything else. The Crown ought to have the fullest discretion to select, for appointment as Judges of the Supreme Court, gentlemen who have the requisite experience and ability in law—the fullest discretion to select such persons—and there should be no limitation of any kind or sort.

Chairman: Not confined to practising lawyers?

Sir Muhammad Shafi: Oh, no, they may be Judges of the High Court, or they may be practising lawyers.

Mr. Sastri: Supposing a Judge of the High Court has never been a professional lawyer, would you exclude him?

Sir Muhammad Shafi: Personally I think that members of the Indian Civil Service are out of place in a Supreme Court.

Mr. Gavin Jones: But you would not disqualify them in any constitutional scheme?

Sir Muhammad Shafi: This is my own opinion. I say that they ought to be quite content with the existing position, which enables them to rise as high as a Judgeship of the High Court; I would not let them go any higher.

Mr. Sastri: But you mentioned only legal ability and experience as qualifications. You did not specify anything else.

Mr. Jinnah: He is now doing it.

Sir Muhammad Shafi: I am now adding it. Lord Chancellor, there is one thing further in this connection to which I wish to invite your attention. According to Article 20 of the Statute of the Permanent Court of International Justice, every member of the Court shall, before taking up his duties, make solemn declaration in open court that he will exercise his power impartially and conscientiously. In view of the conditions in India, I would incorporate in the Statute a provision similar to that contained in this Article 20 of the Statute in question.

Then the next question that you have been pleased to put to us is in connection with the removal from office of the Judge, and also the length of his tenure of office. Now, with regard to the removal of a Judge of the Supreme Court from his office, may I invite attention to the law in South Africa and Australia? According to Section 101 of the South African Act,

> "*The Chief Justice of South Africa and other Judges of* the Supreme Court of South Africa shall not be removed from office except by the *Governor General in Council* on an *address from* both Houses of Parliament in the same session praying for such removal on the ground of misbehaviour or incapacity."

According to Section 72, Sub-section (ii) of the Australian Act,

> "The *Justices of the* High Court and of the other Courts created by the Parliament . . . .
>
> (*ii*) Shall *not be removed* except *by the Governor General* in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity."

The two enactments are almost word for word the same. According to Section 99 of the Canadian Act,

> "The Judges of the Superior Courts shall hold Office during good Behaviour, but shall be removable by the Governor General on Address of the Senate and House of Commons."

According to the Constitution of the United States of America, Article III, section 1,

> "The Judges, both of the Supreme and inferior courts, shall hold their offices during *good* behaviour."

and that is all, without any further provision regarding an address from the American Legislature. Those are the provisions in the other constitutions.

Chairman: There is a very important addition in the American one, namely, "a compensation *which shall not be diminished during their continuance of office.*" .

Sir Muhammad Shafi: Yes, that is so. *It seems to me that the question before this Committee is whether the Statute should embody* merely a provision to the effect that the Judges of the Supreme Court shall hold office so long as they do not misbehave, or whether we should go further and hold that they be not removed from office without an address by the two Houses, that is to say, the Assembly and the Senate. Personally, I am inclined to the opinion that we should adopt the latter course. *It is the course which is provided by the South African and the Australian Constitutions.*

Dr. Ambedkar: Do you have to prove misbehaviour or incapacity?

Sir Muhammad Shafi: No, I should leave it to the two Houses

As regards the place at which the Court should ordinarily hold its sittings, I am of opinion that it should sit at Delhi. Delhi is the proper place where the Court should be located. It is central, it is the seat of the Government of India, and I think the Supreme Court should properly sit in the Capital.

Then we come to the rule-making power of the Supreme Court. Your Lordship has suggested that this power should be given to the Chief Justice, subject to the approval of the Governor General, who should have power to regulate the procedure of the Federal Court, including the provision enabling the Court to sit in more places than one. I am in general agreement with that suggestion; but whether that power should vest in the Chief Justice, or in a Committee consisting of the Chief Justice and other Judges, is a matter for consideration.

Chairman: A rule Committee?

Sir Muhammad Shafi: A rule-framing Committee. That is a question for consideration. At present, as far as I am aware, there are rule-making Committees in almost all the High Courts, and the membership of those Committees is not confined to the Judges alone —leaders of the Bar also are appointed by the Judges.

Chairman: It is the same here.

Sir Muhammad Shafi: I think that is an excellent practice and one which, in my opinion, ought to be continued. I think I have now dealt with all the points in your note.

Chairman: I think the only one you have left out is the salaries of the Judges.

Sir Muhammad Shafi: And also the appointment of the staff. My own view is that the salaries of the Judges should be fixed by the Central Legislature but, once fixed, they should be non-votable. The amount should be fixed by the Legislature, but, once fixed, it should be non-voted. I do not wish to make any suggestion as to the amount. When I say it should be fixed by the Legislature, it is not for me to suggest anything.

With regard to the appointment of the staff, I think it is the South African Constitution which provides that the appointment of the staff shall rest in the hands of the Governor General. In other constitutions it is in the hands of the Chief Justice. I remember there is only one Act in which it rests with the Governor General. My own view is that the appointment of the staff should rest with the Chief Justice.

Sir Tej Bahadur Sapru: When, a few days ago, you intimated to the Committee that you proposed to take up the question of a Supreme Court, I ventured to ask Your Lordship whether you would confine the discussion merely to the Supreme Court or whether you would throw it open to the larger question of the judicature in India; and Your Lordship was pleased to observe that you would expect some of us to discuss the question in its larger aspect. Bearing that view of Your Lordship in mind, I shall make a few

general observations with regard to the judicial position as it exists at the present moment in India, and then pass on to the Supreme Court, its constitutional position in our constitution, its functions and its powers.

In various constitutions which have addressed themselves to the task of appointing a Supreme Court, you will find that provisions have *been made, not only for the establishment of* a Supreme Court, but also for the establishment of other inferior Courts. That is a position which you are not called upon to face in India. In India *you have got* already a hierarchy of Courts, beginning with the most junior Courts in the districts or the sub-districts and ending with the High Court at the top. The history of some of these Courts can be traced back to the time of Lord Cornwallis or even to the time of Warren Hastings; but, more or less, the position, so far as the judicial system in India is concerned, has remained the same as it was in the time of the East India Company—with this material difference, that in the year 1861 or 1860 the High Courts in India were established by an Act of Parliament and by Letters Patent issued by the Crown. Unfortunately we have got a multiplicity of Courts and a multiplicity of jurisdictions in India, not by *any means less confusing than was the case in England until* your Judicature Acts of 1873 were passed.

It is necessary for me to remind Your Lordship that, in India, we make a very clear distinction between revenue Courts and civil Courts. It would be wrong to suppose that the revenue Courts are not connected with the High Courts. The High Court does in many places exercise a very material jurisdiction in regard to certain matters over revenue Courts.

I will deal with the High Court first The High Courts were established by Act of Parliament, and superseded two different *kinds of Courts which existed at that time. One class of Court* was known as the Supreme Courts, existing in the Presidency towns of Calcutta, Bombay and Madras. The others were known as the Sadar Diwani Adalats, which dealt with cases on appeal from the subordinate Courts, which came from the Provinces. The Supreme Court more or less followed the English practice. It had very much larger powers than the Sadar Diwani Adalats. In fact, as one early writer says, it was "The extended arm of the King's *Bench Division in England." The Supreme Courts, the history* of which can be traced back to the time of Warren Hastings, were composed exclusively of members of the English Bar recruited in England.

Chairman: Was that under the Regulating Act?

Sir Tej Bahadur Sapru: Yes. Members of the English Bar from England went out to occupy those judicial appointments. The Sadar Diwani Adalats were mostly composed of members of the Indian Civil Service or, before the Indian Civil Service came into existence, of a miscellaneous class of officers who acquired, some how or other, some sort of judicial experience. In course of time

you found that, in the Sadar Diwani Adalats, there was, here and there, a sprinkling of professional lawyers in two or three places on two or three occasions; but mostly they were composed of Judges recruited from the Civil Service or from other Services. So far as the criminal administration of justice was concerned, it was in the hands of Sadar Fouzdari Adalats. When the High Courts were established, these two jurisdictions were amalgamated—the jurisdiction of the Sadar Fouzdari Adalats and the jurisdiction of the Supreme Court. The Supreme Court had jurisdiction restricted to the limits of the Presidency towns. At times, the Supreme Courts ventured to issue their writs outside their territorial limits; but that, of course, is a matter of controversy as to whether it was just or unjust, or allowed by law or not allowed by law. They tried to assume that jurisdiction.

Now, the Supreme Courts, generally speaking, had to deal with commercial cases in the Presidency towns where there was a large European population. Not only had they to deal with large commercial cases, but they had also to deal with cases relating to the personal laws of the Hindus and the Muhammadans arising within those limits. Naturally, therefore, they adopted the practice and the procedure of the English Courts; and you will find even to-day great differences in practice and procedure prevailing between the Presidency towns of Calcutta, Madras and Bombay, on the criminal side of the High Court, and what are known as the Mofussil Courts. Well, when the question came up before Parliament of establishing High Courts, they had to consider the question of the composition of the Judges, and then it was decided—and I will read out to Your Lordship the section of the Government of India Act presently —that a certain number of appointments on the Bench should be reserved for members of the English Bar, that a certain number of appointments should be reserved for members of the Indian Civil Service, and that the rest should go to anyone who was either a Judge or an advocate or a member of the Provincial Judicial Service. Well, on the face of it, it looks as if it was the worst kind of communal representation on the Benches that was adopted at that time, but there are reasons for that. In the year 1860 or 1861, when that Act was passed, there was no indigenous Bar of the size or of the talent or of the influence of that which has now grown up in India. The Civil Service, too, was not so strong, but it had exercised judicial functions for a considerable length of time even then. The Provincial Service was very raw and very immature, and had yet to win its spurs. Therefore, I should think, it was decided that there should be a division between the members of the English Bar and the members of the Indian Civil Service in the proportion laid down in the Act. I will just remind Your Lordship of Section 101 of the Government of India Act. It says that—

> "(2) Each High Court shall consist of a Chief Justice and as many other Judges as His Majesty may think fit to appoint,"—

and then clause (3) of Section 101 provides that—

"A Judge of a High Court must be—

(*a*) A barrister of England or Ireland or a member of the Faculty of Advocates in Scotland, of not less than 5 years' standing."

Notwithstanding the fact that Ireland has now become a Dominion or a Free State, it still continues to enjoy that privilege so far as the Indian High Courts are concerned. Sub-clause (*b*) says:—

"a member of the Indian Civil Service of not less than ten years' standing, and having for at least three years served as, or exercised the powers of, a District Judge; or

(*c*) a person having held judicial office, not inferior to that of a subordinate Judge or a Judge of a Small Cause Court, for a period of not less than five years; or

(*d*) a person who has been a pleader of one of the High Courts . . . for an aggregate period of not less than ten years."

So that is how our Judges of the High Courts are made up.

Then clause (4) of the same section provides for the qualifications of the Chief Justice, which has given rise to a considerable amount of controversy in recent years, and it is this:—

"Provided that not less than one-third of the Judges of a High Court, including the Chief Justice but excluding additional Judges, must be such barristers or advocates as aforesaid, and that not less than one-third must be members of the Indian Civil Service"

If there is one institution established in British India by British rule of which men like me can legitimately be proud, it is certainly the High Court; and I desire to pay a tribute to the work done by the High Courts in the various Provinces of India during the last sixty or seventy years. Those are the institutions to which people look up for the protection of their lives, their property, their honour, and their freedom; and notwithstanding the disappointments at times, which must happen under the best conditions in any part of the world where there is civilised government, the fact remains that the High Courts generally come up to the expectation of the people in the discharge of their duties. But, while this is the general feeling with regard to the High Courts, I do not think I can on this occasion omit to refer to the very strong feeling which has been growing up in professional circles, and indeed among the public generally, for a number of recent years, that the time has come when Parliament or the newly-constituted authority, whatever it may be, should revise the Statute so far as the composition of the High Court is concerned. By prescribing that one-third of the members must be barristers and one-third of the members must be members of the Indian Civil Service, you sometimes—I have known it happen on more than

Sir Tej Bahadur Sapru: What has been held is, that the pract-
cal usage during the last sixty years has been uniformly one way
and therefore, in order to remove any possible doubt, what I
necessary is that the Statute should be made quite clear.

Now, we have got a system of appointing additional Judges in
the High Courts. I speak subject to correction by Your Lordship,
but I do not think you have anything like that in England. You
have Commissioners of Assize, but you have not got additional
Judges. I have always been strongly opposed to these additional
appointments. We must have a sufficient strength of Judges on
the Bench to meet any unforeseen fatalities or retirements or cases
of sickness. To my mind, these additional Judgeships have had a
very demoralising effect on the Bar in India, and also on some of
the Services. Therefore I say that we must do away with the
provision with regard to additional Judgeships. I will only invite
your attention to Section 106 of the Government of India Act:—

"The several High Courts are Courts of record and have
such jurisdiction, original and appellate, including admi-
ralty jurisdiction in respect of offences committed on the
high seas, and all such powers and authority over or in
relation to the administration of justice, including power to
appoint clerks and other ministerial officers of the Court,
and power to make rules . . . ."

In point of fact, it is not this Section which lays down their juris-
diction definitely. Their jurisdiction is really laid down more
definitely in the Letters Patent which have been issued to various
Courts, and they have the jurisdiction which has been conferred on
them by certain Acts of the Indian Legislature.

Coming to the question of jurisdiction, I will only remind Your
Lordship that the jurisdiction which the Presidency High Courts
exercise is far larger than the jurisdiction which the appellate High
Courts in Allahabad, Patna and Lahore exercise. I see absolutely
no reason why, merely because these Courts are appellate Courts,
they should not exercise that jurisdiction which is exercised by the
Presidency High Courts. For instance, no writ of *mandamus* or
habeas corpus could be issued by any one of the appellate High
Courts in Patna, Lahore or Allahabad. It is only during the last
few years that, by an amendment of the Code of Criminal Proce-
dure, the High Courts, under Section 491, can take certain pro-
ceedings in the nature of writs of *habeas corpus*; but these appellate
High Courts have no power at all to iss[illegible] *mandamus* or
various other writs. The question of en[illegible] the High Courts
with these powers was taken up some ti[illegible] the Govern[illegible]
of India; and I remember one learned J[illegible] belonged t[illegible]
Indian Civil Service, solemnly saying [illegible] ppellate
Courts do exercise these powers, it wil[illegible] d of B
rule in I[illegible] I hope we shall app[illegible] tion c
jurisdic[illegible] igh Courts now in [illegible] ter mo
on an[illegible] than that display[illegible] ed Ju

I therefore say that you must strengthen the position and the powers of these High Courts. Frankly, I am very anxious that, so far as the High Courts are concerned, nothing should be done under the proposed constitution which might weaken their position. On the contrary I am very anxious that their position should be strengthened in every possible way. These High Courts exercise an enormous jurisdiction over the subordinate Courts in regard to judicial matters. Sir Muhammad Shafi said that, in regard to criminal matters, the High Courts do exercise both appellate and revisional jurisdiction over the subordinate Courts. It is perfectly true that, under our law, the appeal lies both on facts and on law to the High Court; an appeal lies not only against sentences of conviction but also against orders of acquittal. I should leave the question as to whether an appeal should lie against orders of acquittal to the future Legislature; but, if it is intended that there should be a further appeal to the Supreme Court against criminal sentences passed by the High Courts, I should very much more closely define the limits within which those appeals would lie, and I would suggest that no such appeal should be allowed to the Supreme Court against the sentence passed by a High Court except upon a fiat or a certificate by the Advocate-General. For that reason I would suggest that the position and status of the Government Advocates in the different High Courts should also be raised to the status of the Advocate-General in the Presidency towns.

Now, Section 114 of the Government of India Act deals with the appointment and powers of the Advocate-General:—

> "(1) His Majesty may, by warrant under His Royal Sign Manual, appoint an Advocate-General for each of the Presidencies of Bengal, Madras and Bombay. (2) The Advocate-General for each of those Presidencies may take on behalf of His Majesty such proceedings as may be taken by His Majesty's Attorney-General in England."

You have got this power limited only to Bengal, Madras and Bombay; and I do suggest that there is no reason why, under the revised constitution, we should not have Advocates-General outside Bengal, Madras and Bombay, wherever there are High Courts, and that these Advocates-General should have the power to certify in certain cases that an appeal should lie to the Supreme Court, following more or less the same practice as is followed in the Presidency towns.

Mr. Jinnah: You know that the Advocate-General can only certify if there is a question of law; he cannot go into the facts.

Sir Tej Bahadur Sapru: That is what I am saying. I am not suggesting an unlimited right of appeal. I am only suggesting a limited right of appeal.

Mr. Jinnah: But in criminal cases the question of law is very seldom at issue.

Sir Tej Bahadur Sapru: I am not [illegible] limited right of appeal to the Supreme Court, [illegible]

to the Supreme Court under certain conditions. Those conditions have got to be carefully defined. Otherwise, you will find that the Supreme Court will become a Court of Criminal appeal to the exclusion of all other work in India.

Mr. Jinnah: Yes; that is a different point; but I was only suggesting this, that if you only confine it to the certificate of the Advocate-General, then the certificate can only be issued on an error of law.

Sir Tej Bahadur Sapru: An error of law, yes, that is the phrase.

Now, My Lord, so much with regard to the High Court. I am not dealing with the question of the subordinate Courts, because most of these subordinate Courts have been established either by Acts of the Governor-General or by certain local Acts; and so far as their re-organisation is concerned—so far as reforms in the subordinate judiciary are concerned—that is a matter which should be left to the discretion of the future Federal Government or of the future Provincial Government.

I now come directly to the question of the Supreme Court. So far as the Supreme Court is concerned, in a Federal Constitution it exercises, as Your Lordship has pointed out in your note, and as will appear from any textbook on the subject, a very great function. It really acts as the balance wheel of the constitution, to use the words of a great American writer who, at another place, says that it is the final conscience of the constitution. In a federal constitution you must have some sort of machinery for deciding the question of the validity or invalidity of any legislation passed by the Federal Legislature or by the subordinate Legislatures. It is precisely in regard to that matter that the supreme Court exercises some of its best and greatest functions; and, so far as questions of interpretation of the constitution are concerned, there, too, the Supreme Court discharges functions of a most valuable character. I am not, therefore, going to argue any further the theoretical advantages of having the Supreme Court under a federal constitution. I think that is a point beyond all controversy, and I will address myself more to the composition of the Supreme Court and its functions and powers.

The Supreme Court which we have in view will discharge very great functions also in relation to the Indian States, and it is with regard to the Indian States that I should like to make a few observations. According to my humble reading of the constitution such as we have been discussing during the last year, the Supreme Court will not be a foreign Court so far as the Indian States are concerned; and I would beg Their Highnesses to remember that the Supreme Court will be as much a creation of theirs as of ours. By the delegation of certain elements of sovereignty to the Crown, the Crown will bring into existence a Supreme Court to determine questions of controversial character which may arise between Indian States on the one side and British India on the other side. Therefore these views will be submitted, not to an outside body, but to a

tribunal which is as much theirs as ours. For that reason I would appeal to Their Highnesses not to have any suspicion or distrust on the ground of their sovereignty as to the proper function of the Supreme Court or its proper character.

Having dealt with that question, I will now pass on to the functions of the Supreme Court. The functions of the Supreme Court may for convenience be divided into two parts. There are, first, those which relate to matters of a Federal character. For instance, if there is a dispute between one Indian State and another of a justiciable character, or if there is a dispute between an Indian State which is a member of the Federation and, say, any Province, or if there is a dispute between one Province and another of a justiciable character, all these matters have to go to the Supreme Court. Similarly, any question as to the interpretation of the constitution must also go to the Supreme Court.

The question therefore arises: how will these questions go before the Supreme Court? Will they go to the Court on its original side or on its appellate side? Most of the disputes which directly arise between different Units of the Federation—whether one Unit be a British Indian Unit and the other a Unit belonging to the Indian States or not—will have to be disposed of by the Supreme Court on its original side. But it is quite conceivable that certain issues, raising questions relating to the constitution or the interpretation of federal law, may arise in the course of private litigation, either in British India or in the Indian States.

Chairman: We have trouble ourselves on this point.

Sir Tej Bahadur Sapru: If such a case should arise, what are we to do? Frankly, it would be nothing short of a misfortune if you had a situation in which every Court in British India and every Court in the Indian States should give a decision on the interpretation of the constitution or on a matter of a Federal character. Already our case law is a wilderness, and I think one consequence of allowing freedom to every single Court to deal with questions of that character will be to invite a most confusing conflict of judicial authority. Well, in point of fact, at the present moment, as the law stands, it is open to any Court in British India to discuss the validity of any Act of the Indian Legislature. Their Lordships of the Privy Council have recognised expressly that power of the Indian Courts; but when the new constitution comes into existence, questions of such great difficulty under the constitution are bound to arise that I shudder to think what the consequences may be if Munsiff A and Subordinate Judge B and Magistrate C take it upon themselves to deliver judgments interpreting the constitution or disposing of those Federal issues. I therefore suggest that, whenever a question of that character arises in the course of private litigation—that is to say, litigation to which private persons are parties—or in the course of litigation to which one of the parties is a private person and the other is a State, a case should be stated by that Court for

the opinion of the Federal Court; and, when the opinion of the Federal Court has come back to the original Court which was seized of the case, that Court should give its final decision following the view of the Supreme Court or Federal Court.

Chairman: Let us assume, for the sake of argument, that the Federal Legislature passes a Sale of Goods Act, and a question arises in private litigation between two people, we will say in Bombay, on this Sale of Goods Act, and it involves, as you have just been putting so very clearly, some constitutional points. Is the judge in such a case of his own motion to say "This involves a constitutional point, and I shall at once state a case for the opinion of the Federal Court? Is that to be it?

Sir Tej Bahadur Sapru: That is my point. I should like to mention that what I am suggesting is not by any means unknown elsewhere.

Chairman: We have the same problem at this moment in England. What about the costs? Is not it rather hard on those private persons?

Sir Tej Bahadur Sapru: That, I submit, is inevitable. So far as the costs are concerned, they will have to be determined having regard to all the merits of the case—who was the person who initiated that litigation, who was the person who was refusing the right of the plaintiff, and so on. All these questions will have to be taken into consideration by the Judge before he awards costs. May I illustrate that from what happens at the present time in India? Your Lordship will remember that, a few minutes ago, I referred to the revenue Courts which exist in India, and which exercise a very special jurisdiction in several Provinces. Now, the revenue Courts generally deal with questions of revenue between the State and the landlord, or with questions relating to rent between landlord and tenant. If, in any litigation arising in a revenue Court, a question of title is raised, the law provides that that Court will stay its proceedings to state a case on that particular point to the neighbouring Civil Court and get its decision, and finally pass its judgment in accordance with the decision on that particular point. That happens every day in several of the Provinces with which I am acquainted. What I suggest is some similar procedure in this connection.

Sir Sultan Ahmed: In the case to which you refer, the word used is, "may," not "shall." They may decide the point summarily or they may refer the matter to the Civil Court for decision.

Sir Tej Bahadur Sapru: Under certain Acts it is also "shall."

Sir Provash Chunder Mitter: In Bengal it is "may."

Sir Tej Bahadur Sapru: Yes, in Bengal, but I am speaking of land legislation in the United Provinces. That has been found to be very convenient, and it has led to the avoidance of a great deal of unnecessary litigation and waste of time in India—I do suggest that in the interests of uniformity of authority, it is a procedure

which, at any rate, might be investigated and examined, and if you find it satisfactory then you should incorporate it there.

Sir Muhammad Shafi: May I ask a question on this point? There are altogether 11 Provinces in India and, roughly speaking, there are on an average 25 districts in each Province; so that altogether there are not less than 300 districts in India. In each district there are five or six Courts, so that there are over 1,000 Courts in India. If, in a whole year, each Court sends up to the Supreme Court even only one reference, there will be 1,000 references from different parts of India.

Sir Tej Bahadur Sapru: I am not frightened by what Sir Muhammad Shafi has just said.

Mr. Jinnah: I would like to understand one point so that I may give attention to it. Your Lordship gave the example to Sir Tej of the Sale of Goods Act, and you said "Supposing some constitutional question arises: what is to happen?" I want to know what you mean by "constitutional question."

Chairman: I mean a question involving a point which is a constitutional point under any Act of the Federal Government.

Mr. Jinnah: We will assume that the Sale of Goods Act is a Federal Act. What is the constitutional question which you are imagining?

Chairman: I am not thinking of any particular constitutional question, because it is impossible to imagine. I cannot envisage what would arise. All I am saying is, supposing a constitutional question arises.

Mr. Jinnah: I should like to know what is in your mind.

Chairman: The Loch Foyle case.

Mr. Jinnah: That will go to the root of the Act?

Chairman: Yes.

Mr. Jinnah: If it is only a question of the construction or interpretation of the application . . . .

Chairman: No trouble.

Mr. Jinnah: It is only when a question is raised which goes to the very root of the matter—of the very Statute—that the point arises as to what is to happen?

Chairman: Yes.

Mr. Jinnah: Yes. That is really what I had in view—the question of the validity or invalidity of the Act.

Sir Tej Bahadur Sapru: But assuming that this suggestion of mine is not accepted, then I would suggest that an appeal should lie to the Federal Court from all decisions, whether they are passed by British Indian Courts or by the Courts of Indian States, wherever there is a question of a Federal character involved or a question of the interpretation of a Federal law involved.

Chairman: Well, that is more like America, is it not?

Sir Tej Bahadur Sapru: And I do not think that Their Highnesses can reasonably take exception to that on the ground that they are submitting to the jurisdiction of a foreign Court. Therefore I make my suggestion in the alternative—either an appeal on a question of a constitutional character under the Federal law to lie to the Supreme Court in its Federal jurisdiction, or the practice which I have suggested of stating a case for the opinion of the Supreme Court.

Before I go to the question of the relations of the Supreme Court to the High Courts in India, I would like to dispose of one or two other connected matters. The Supreme Court, as Your Lordship will remember I said a few days ago, will exercise very great powers in regard to certain safeguards which may be provided for the minorities, and I would welcome arming the Supreme Court with some special powers, or with powers which belong to Supreme Courts generally, in regard to such matters. Sir Muhammad Shafi, in the course of his speech, suggested that, if a Bill is in progress in any Legislature, and any number of persons belonging to a particular community take exception to that Bill on the ground that it infringes some fundamental principle, that matter should forthwith be referred to the Supreme Court.

Sir Muhammad Shafi: Not forthwith; for instance, if the President announced that there was no case.

Sir Tej Bahadur Sapru: I mean, before the Bill was passed into law. Well, I personally think that that would block all legislation, and that it is apt to be abused by parties, particularly when political passions will be strong in regard to any particular legislation; and I would suggest that, instead of the proceedings of the Legislature being stayed by an injunction—and I should like to avoid government by injunction—that legislation should be proceeded with. At the end of that legislation, if any particular interests are involved or are prejudiced or are affected, I should permit those interests to seek their remedy in the ordinary Courts; but I should not hold up the legislation merely by an injunction during the proceedings of the Legislature. Frankly, I do not wish an unpleasant situation to arise at that time between a Court of law and the Indian Legislature.

Then, again, Your Lordship was pleased to put a further question, and that was whether we contemplated providing a period of limitation during which an Act passed by the Federal Legislature might be challenged in the Federal Court. I think that was the question raised by Mr. Joshi. Well, the Indian Limitation Act has got nothing to do at the present moment with any case in which the validity of any Act under the present constitution can be challenged. An Act of the Indian Legislature may have been passed 25 years ago or 30 years ago, and yet, if the question of its validity directly or indirectly arises now, the validity of that Act can be challenged. I do not think it would be right for us to

prescribe a time limit within which the validity of an Act may be challenged, because it is, to my mind, not right that, before a cause of action has arisen we should deprive the man of the remedy. Therefore, I would leave the question of the validity or the invalidity of the Act to be challenged at any time whenever it may be necessary to raise it.

(The Committee adjourned at 4-5 p.m.)

PROCEEDINGS OF THE THIRTY-EIGHTH MEETING OF THE FEDERAL STRUCTURE COMMITTE, HELD ON THE 21ST OCTOBER, 1931, AT 12 NOON.

HEAD 8.

The Federal Court—(continued).

Sir Tej Bahadur Sapru: My Lord, There remain very few points for me to deal with now, and I shall deal with them as briefly as I possibly can.

We all contemplate that the Supreme Court or the Federal Court will have original jurisdiction as well as appellate jurisdiction; but, so far as the original jurisdiction is concerned, we cannot overlook the fact that we must make provision at some time for appeal from Judges sitting on the original side. I suggest that we should provide, following the practice that prevails in the Indian High Court under the Letters Patent issued by the Crown, for an appeal to Division Benches from the decision of single Judges *exercising an original side jurisdiction. Technically speaking,* they are known in India as Letters Patent appeals; that is to say, if a Judge sitting on the original side of the Federal Court disposes of a matter, then a Division Bench consisting of two or more of the Judges of the same Court may hear an appeal from that decision.

The next question which will arise will be as to whether we shall provide for an appeal from the decisions of the Supreme Court to Their Lordships of the Privy Council here in regard to federal and constitutional matters. I do not wish in the slightest degree to infringe or encroach upon the prerogative of the Crown, which exists in all the Dominions, notwithstanding some attempt which has been made in recent times, or rather during the last two or three years, to question that prerogative in Ireland; but I would suggest that, so far as the decisions of the Supreme Court in regard to constitutional and federal matters are concerned, they should be final and treated as conclusive. I do not know what exactly will be the view which will be put forward by Their Highnesses Personally speaking, I am open to conviction on this question. I do not know whether they contemplate that appeals from decisions of the Supreme Court may under certain circumstances and under certain conditions, lie to Their Lordships of the Privy Council. But, speaking for myself, I should be quite content if the prerogative of the Crown remains there, and with it we invest the decision

of the Supreme Court with finality in regard to these federal matters.

I will pass now to another class of jurisdiction which Your Lordship indicated in your Note—I mean the advisory jurisdiction. Following the practice of the Judicial Committee Act, I understand the suggestion is that it should be open to the Governor-General to make a reference to the Supreme Court in regard to any matter of a justiciable character or in regard to any matter involving the interpretation of the constitution, for the opinion of the Judges of the Supreme Court. I would welcome such a jurisdiction. Indeed, you might follow the precedent of some of the Dominions and give the Governor-General the power to take the opinion of the Supreme Court as to whether a particular measure, which has been passed by the Legislature, is or is not inconsistent with any fundamental principle, before he gives his assent to the Bill in question. That is a matter for consideration. Personally, I think that, if you gave that power to the Governor-General, it would save a great deal of unnecessary litigation at the instance of a private party, either at the earlier stage during the progress of the Bill, as suggested by Sir Muhammad Shafi, or at a later stage, as suggested by me, after the Bill had been passed by the Legislature.

Chairman: I should like to draw your attention to a difficulty which has been felt in the Privy Council, and which you will find reported in the case of *The Attorney-General of British Columbia* versus *the Attorney-General of Canada* (1914, Appeal Cases, page 162). It was a judgment given by Lord Haldane in a case in which the Governor-General had asked certain questions of the Court which the Court found it extremely difficult to answer, and he said this:—

> "The business of the Supreme Court of Canada is to do what is laid down as its duty by the Dominion Parliament, and the duty of the Judicial Committee, although not bound by any Canadian Statute, is to give to it, as a Court of Review, such assistance as is within its power; nevertheless"—

and this is the point to which I was referring under that Act of 1833—

> "under this procedure questions may be put of a kind which it is impossible to answer satisfactorily. Not only may the position of future litigants be prejudiced by the Court laying down principles in an abstract form without any reference or relation to actual facts, but it may turn out to be practically impossible to define the principle adequately and safely without previous ascertainment of the exact facts to which it is to be applied. It has therefore happened that in cases of the present class"—

that is, the class we are now discussing—

> "Their Lordships have occasionally found themselves unable to answer all the questions put to them, and have found it advisable to limit and guard their replies."

The reason I draw your attention to that is because it falls to my lot to give judgment in the Privy Council to-morrow on that very question, and I know how difficult it is. I think it is a very good jurisdiction—I agree with you there—but I would point out to you that it is a very difficult one when you have to answer questions in the abstract.

Sir Tej Bahadur Sapru: I may say that I am fully aware of the difficulty; and perhaps you will bear me out, My Lord, when I say that, in the entire English legal history, Judges have always revolted against being called on to advise on abstract questions of law, because it is very embarrassing to them to decide abstract questions of law independently of concrete facts. Nevertheless, while that has been the course of legal history in England, and while that is undoubtedly the English judicial sentiment, we feel that such jurisdiction has been given in the Dominions, and I may say that even in India, under certain Acts and regulations, Governments have got the power to make references to the High Court for obtaining their opinion on questions of law. I have known that actually being done under certain regulations and under certain Acts. Of course, I realise the inconvenience of it, and I do not wish to overlook that aspect; but having regard to the very, very important questions which the Governor-General will have to answer himself, it is far better that he should have the satisfaction of having obtained the opinion of independent Judges than that he should depend upon the advice either of his secretaries or even of his law advisers.

As Your Lordship was pleased to refer to the Judicial Committee Act of 1833, I would only remind you that some very important questions have, in recent years, come up before the Judicial Committee under that Act. I know of one case in which a dispute arose between the Government of India and the Chief Justice of a certain High Court with regard to a certain appointment, and that had to be referred to the Privy Council.

I will say no more now, My Lord, on the Federal side of the jurisdiction of the Supreme Court. I will pass on now to the non-Federal side of the jurisdiction of the Supreme Court.

I entirely endorse the remarks made by Sir Muhammad Shafi that there has been a very strong feeling growing in India, quite apart from the Federal constitution, that we should have a Supreme Court in order to set at rest at times great conflicts of opinion that exist in so many Courts as exist in India, and also to make it easier for the poorer litigant to have the right of appeal which he cannot afford to exercise when he has to come across to England. I therefore think that we should invest the Supreme Court also with the character of an appeal court, exercising appellate power over ordinary litigation in the various High Courts of British India; but, while I agree to that extent with Sir Muhammad Shafi, I am not prepared to endorse the remark of Sir Muhammad Shafi that this appellate jurisdiction of the Supreme Court should be limited

to matters of the value of one lakh of rupees. My own view is that I should allow appeals from the various High Courts to the Supreme Court upon the same conditions as now obtain in regard to appeals from the High Courts to the Privy Council.

Mr. Zafrullah Khan: If you will excuse me, I believe what Sir Muhammad Shafi said was that any suits up to the value of one lakh —beginning with Rs. 10,000, I suppose—should go to the Supreme Court.

Sir Tej Bahadur Sapru: I do not agree with that.

Mr. Zafrullah Khan: I thought you were saying that the minimum value should be one lakh.

Sir Tej Bahadur Sapru: No. I say that, just as at the present moment appeals lie directly to the Privy Council from the High Courts under Sections 109 and 110 of the Code of Civil Procedure, so appeals should lie from the High Courts to the Supreme Court on a certificate given by the High Court. For instance, if there are concurrent judgments of the High Court and of a subordinate Court, and the case does not involve any substantial question of law, there shall be no appeal to the Supreme Court, the judgment of the High Court being final. If there are concurrent judgments, but still the case involves a substantial question of law, the High Court may qualify that by saying that, in their opinion, the appeal is a proper and fit one to go before the Supreme Court. If the judgments of the two Courts—that is to say, the High Court and the subordinate Court—are not concurrent, then the appeal shall lie to the Supreme Court as a matter of right.

Mr. Jinnah: And if the High Court does not give a certificate?

Sir Tej Bahadur Sapru: Then you should make a motion to the Supreme Court for special leave, just as is the practice in the Privy Council. When an appeal has been heard by the Supreme Court and a litigant desires further to take the appeal to the Privy Council, I should impose certain conditions. Frankly, I should not allow an appeal to go to Their Lordships of the Privy Council on any trifling or trivial point. If the case is one which involves a really substantial question of law affecting a large section of the community, or it affects a very large property, then I should allow the Supreme Court to give a certificate that the matter may be taken up before Their Lordships of the Privy Council. I always assume that the Prerogative of the Crown will remain unaffected.

Now, My Lord, there remain two or three minor questions. One of the questions raised was whether the power of making appointments in the Supreme Court should remain with the Chief Justice or with the Government of India. I would venture to say that, in the interests of the Court itself, I should give that power to the Chief Justice of the Supreme Court. What really happens in actual practice in the various High Courts at the present moment is that, although the power belongs by law to the Chief Justice, the Chief Justice appoints a Committee of Judges, which is technically

known in India as the English Committee, to be distinguished from the Rule-making Committee."

Sir Provash Chunder Mitter: If I may interrupt for a moment—in the last 15 years that practice has been departed from in Bengal.

Sir Tej Bahadur Sapru: It still prevails in parts; I know it prevails in Patna and in Madras.

Sir Provash Chunder Mitter: And that was the practice in Bengal.

Sir Tej Bahadur Sapru: So that, in actual practice, a Chief Justice, who may have many other important things to attend to, will seek the advice of his colleagues in regard to these important matters; but I should by law leave that power with the Chief Justice, leaving it to him to devise any means that he thinks proper for carrying out his function in that behalf.

Then there will be one question which I will just ask you to consider. I am aware that on that particular point there may be room for difference of opinion. I put it very tentatively. I am referring to it because I feel there is a feeling even among the Judges in India, in view of this constitution which is now under consideration. That question is whether, so far as the High Courts are concerned, they will have direct relations with the Central Government or the Federal Government, or whether they will continue to have their relations with the Local Government. As the matter stands at present, the Calcutta High Court is the only High Court which has direct relations with the Government of India. The Government of India are called upon from time to time to make appointments of Judges there; or, rather, to make recommendations about the appointment of Judges there—that would be a more correct way of putting it. In the case of the other High Courts, their relations are directly with the Local Governments. I am aware that there is a feeling among Judges that, in the future constitution, the Judges of the High Court should be placed in an absolutely independent position and should not be liable to local pressure in any shape or form. It is for that reason I suggest—though I will not be dogmatic about it—that, so far as the High Courts in British India are concerned, they should be brought into direct relation with the Central Government or the Federal Government.

Mr. Jinnah: What do you mean by pressure?

Sir Tej Bahadur Sapru: Pressure has been exercised. If you ask some Judges of the High Court, they will tell you that. Pressure can be exercised by questions in the local Council with regard to appointments, with regard to staff, with regard to expenditure and so on, and debates on such subjects have taken place, unfortunately, during the last two or three years, in certain Legislative Councils. As a matter of fact, I know that Judges, both European and Indian, have resented that sort of interference with their internal autonomy, and it is for that reason that I have expression to that view.

Mr. Jinnah: Do you think the Centre will be free from the pressure?

Sir Tej Bahadur Sapru: Very much more. Local prejudices and local passions are far more injurious to the independence of the judiciary than a discussion which may take place once in ten years at the Centre.

Now, My Lord, I come to the last point, namely the question of the appointment of the Judges of the Supreme Court. I am frankly very anxious that the Supreme Court which you are going to create shall be a Court which will command the respect and the confidence of the public and of the profession, and that appointments to the Bench of the Supreme Court should be made absolutely on the principle of merit, character and integrity. I would not allow racial or political considerations to come in in any way so far as these appointments are concerned. Well, how is that end to be achieved? That is the question which we have got to face. In Australia and in South Africa the power is vested in the Governor-General in Council. In Canada the power is vested merely in the Governor-General as representing the Crown. In actual practice, as the constitution has developed in Canada, I gather the Governor-General now consults his constitutional advisers; but still the Statute vests that power in the Governor-General as representing the Crown. Having regard to the position in India, and bearing in mind that our constitution will in course of time develop, I would rather follow the Canadian model and give the power to the Governor-General, as representing the Crown, to appoint the Judges both of the High Courts and of the Supreme Court in future. That is my suggestion. With regard to the tenure of office of Judges of the High Court, the position is that, under the Government of India Act, Judges of the High Court hold their office during the pleasure of the Crown; and I know that there is a feeling in judicial circles in India that the tenure of office of the Judges of the High Court in British India should be exactly the same as the tenure of Judges in England, namely, that they should hold their office during good behaviour. With regard to the procedure to be adopted for the removal of a Judge, I would recommend the same procedure as obtains in England—the procedure of an Address by Parliament, subject to certain conditions and limitations.

Mr. Sastri: The High Court or the Supreme Court?

Sir Tej Bahadur Sapru: The High Court and the Supreme Court, both.

Mr. Jinnah: Do you mean as to the appointment also?

Sir Tej Bahadur Sapru: I was speaking as regards the removal.

Mr. Jinnah: But what about the appointment of the High Court Judges?

Sir Tej Bahadur Sapru: The Governor-General.

Sir Akbar Hydari: An Address of which Parliament—an Address of the Federal Parliament?

Sir Tej Bahadur Sapru: Upon an Address by the Federal Parliament. Luckily for ourselves, during the last sixty or seventy years of the existence of the High Court, there have been no such motions made; and I do not think that we need be very much afraid that in future any such motions will be made. It must be said, to the credit of the High Court Judges in India generally, that they have given no reason for a motion of that sort being made, and I do not anticipate that things will be worse in future than they have been in the past.

Mr. Jinnah: We have no power to deal with that.

Sir Tej Bahadur Sapru: There is nothing to prevent you.

Mr. Jinnah: We cannot do it.

Sir Tej Bahadur Sapru: I know that, in one instance in very recent years, certain questions were put with regard to a certain Judge.

Mr. Jinnah. You cannot move a vote.

Sir Tej Bahadur Sapru: I am talking of the future constitution.

Mr. Jinnah: I ask your pardon for interrupting you. You said something with regard to a Provincial Government not having anything to do with the High Courts. Was it with regard to the staff? I did not quite catch that.

Sir Tej Bahadur Sapru: With regard to the appointments, staff and everything.

Mr. Jinnah: Not the Judges?

Sir Tej Bahadur Sapru. Not the Judges. What happens at the present moment is that, if there is any appointment to be made, or if there is budgetary provision to be made for certain expenses which the High Courts have got to incur—I am speaking of places outside Calcutta—the Chief Justice of the High Court puts himself in touch with the Local Government, and then is the occasion for exercising some sort of pressure in the local Legislative Council or otherwise. I do not wish the High Courts to have dealings with the Provincial Councils in regard to those matters.

Mr. Jinnah: The internal administration of the High Court should be responsible to the Centre and not to the Local Governments?

Sir Tej Bahadur Sapru: That is so. You will have to come to some understanding with the Local Governments on that point.

Sir Provash Chunder Mitter: For ten years, or something of that sort?

Sir Tej Bahadur Sapru: Yes.

Sir Akbar Hydari: Would that be an item of expenditure on the Central Budget?

Sir Tej Bahadur Sapru: No, no. That is really what is happening in Bengal and has happened in Bengal. The Local Government finds the funds, but in other matters the High Court deals directly with the Government of India.

Dr. Ambedkar : But the Simon Commission recommended quite the other way.

Sir Tej Bahadur Sapru : I am not following the Simon Commission.

Dr. Ambedkar : They recommended that both should be Central.

Mr. Jinnah : It really comes to this, that although the Local Government finds funds for the internal administration of the High Courts, they must be under the control of and responsible to the Central Government?

Sir Tej Bahadur Sapru : Yes.

Mr. Zafrullah Khan : As regards funds, you mean that the High Court should send an order to the Central Government?

Sir Tej Bahadur Sapru : That will have to be worked out.

Now, My Lord, I come to the last question—the question of the salary of the Judges. Here I am speaking with many apologies to Mr. Gandhi. If you really mean to have a good Supreme Court, then—I will speak in the bluntest possible manner—you must make it worth the while of good lawyers, lawyers of good repute and large experience, to go on the Supreme Court. If you really conceive that you are going to have really good Judges on Rs. 500 a month or Rs. 1,000 a month, or Rs. 1,500 a month, let me tell you frankly that I would much rather go without a Supreme Court at all. You may like it or you may not like it; but the fact remains that, in India at the present moment, you cannot get really first-class lawyers to accept Judgeships of the High Courts, the position in the last ten or fifteen years has so radically changed. For one thing, political careers have opened which were not open to Indian lawyers ten or fifteen years ago. For another thing, whether you like it or whether you do not like it, the scale of fees in the High Court has gone up so high that you can no longer tempt a first-class man to a Judgeship of the High Court, which it was possible for you to do fifteen years ago. I will not mention any particular figure lest I give a shock to some people here. But I do hope that, when the question of the appointment and the salary of Judges is taken into consideration, we will not proceed in an over-cautious manner in this matter. I do not want the Legislature to be over-generous; but we must bear in mind the realities of the situation. I certainly want Judges of the Supreme Court to be a contented lot. When you remember that it is not merely the learning, ability and experience that you have got to pay for among your Judges, but, what is more character, integrity, independence, then I do not think it is a wise policy to have the services of cheap men, because, whatever be the patriotic appeal that you may make, the fact remains that you will have to make it worth the while of distinguished and eminent laywers to become Judges. I have looked into the figures of the salaries of the Judges of various Courts; there is no fixed standard in the Dominions—the

salaries vary from Dominion to Dominion. But you have got to bear in mind, in fixing the salaries, the present position in India. I will not be explicit at the moment; I will leave it to the Federal Legislature of the future to come to a decision on that point. I will only repeat this warning, that it is no use having cheap Judges.

My Lord, I believe I have covered practically all the ground that I intended to cover, and I have nothing more to say.

Sir Sultan Ahmed : My Lord Chancellor, We have listened to two very interesting and instructive speeches on the question of the Federal Court. Both Sir Muhammad Shafi and Sir Tej Bahadur Sapru have made very helpful general observations. I feel, therefore, that in following them it is not necessary for me to dwell at any length on the general aspect of the question; but, as I go on formulating my views on the points that you have raised, I shall be able to indicate how far I agree with their views, and if I do not agree with them, I will formulate my reasons for doing so.

My Lord, the very first question—that is the necessity of a Supreme Court, or call it by any name you like—is the easiest question of all the questions that you have formulated. Once we decide to have a Federal Constitution, a Federal Court is a necessary corollary. It would be a waste of the time of the Committee to give any reasons for the establishment of such a Court; the main questions which will engage the attention of the Committee will be its jurisdiction and its constitution.

I will now proceed to deal with these points in detail. As regards the constitution of the Court—by which I mean the number of Judges required, the qualifications of the Judges and salaries and pensions—much will depend upon what we envisage as the jurisdiction of this Court; but as I will deal with the question of jurisdiction at the end, I will now indicate my views on the question of constitution.

I am strongly of opinion that the Federal Court should be manned by professional lawyers alone. It is well known, My Lord, that in India there is a very strong feeling at the present moment, that the High Courts should in future be manned by professional lawyers alone. The necessity for having members of the Indian Civil Service, which existed for a long time, does not seem to exist now. I am in full agreement with the views expressed by Sir Tej Bahadur Sapru as to his admiration for this distinguished Service. It is the finest Service in the world, and even on the judicial side the work of the members of this Service has been, on the whole, extraordinarily good; but it is, in my submission, an anachronism to have people as Judges of the Supreme Court who are not trained lawyers—men who begin their life by performing executive functions and ultimately, after some years' start, deciding questions of an intricate nature involving questions of civil law, which at times are exceedingly difficult. I would therefore suggest that, when our Federal Court is established, we must man it by professional lawyers; and in this connection, My Lord, I would

refer you to the Report of the Services Committee, paragrap page 65, where they say:—

"We recommend that for the Indian Civil and Inc Police Services recruitment should continue to be carı out on an all-India basis, but the majority of the Commit are of opinion that recruitment for Judicial Offices should longer be made in the Indian Civil Service."

If that be so—and there is no reason why that view should n be accepted—for the High Courts, I should think the reasons mu be still greater for having only professionally trained lawyers f the Federal Court.

Sir Tej Bahadur Sapru : With regard to the Federal Court, i you will allow me to intervene, I should like to say that I an definitely of the same opinion as Sir Sultan Ahmed. It was only with regard to the High Court that I made that exception.

Sir Sultan Ahmed : I am at present dealing with the Federal Court alone. I would, however, have this qualification, namely, that the Judges must be advocates of at least ten years' standing. This will ensure experience, maturity, and also ability.

Sir Tej Bahadur Sapru : I should make it twenty.

Sir Sultan Ahmed : I will make it ten.

Mr. Jinnah : I think a man with ten years' experience may be better than a man with twenty-five years' experience.

Sir Sultan Ahmed : In my opinion, ten years would mean really that he would be thirty-one years of age; and I do not agree with the view which has been expressed in certain quarters that no Judge of the Federal Court should be over thirty!

Sir Sultan Ahmed : As regards the appointment, considering that it is going to be a Federal Court, it is absolutely essential that there should be full confidence in our Judges, both on the part of the people in general and also on the part of the different Units of the Federation—that is, the Provinces and the Indian States; and, in view of that, I would vest the power of appointment in the Crown, that power to be exercised through the Governor-General alone, and not through the Federal Government at all.

As regards the salaries and pensions to be fixed for them, it is difficult to answer that question at present. But I want to have a compromise between the views expressed by Sir Tej Bahadur Sapru and those expressed by Mr. Gandhi; and I would say this, that whatever the pay may be, it should not be in any way less than the pay of the Chief Justice of any High Court in India, except the Calcutta High Court. If the pay of the Chief Justices in the High Courts is Rs. 5,000, I suggest that the pay of a Judge of the Supreme Court ought to be Rs. 5,000—it ought not to be less. There is, however, one Court in India where the salary of the Chief Justice is Rs. 6,000. I am not going to that extent, considering that India is a poor country; but I am in full agreement with my friend, Sir Tej Bahadur Sapru, that it will be of no use think-

ing of a good Federal Court with good, experienced, competent lawyers sitting in that Court on Rs. 500. If you can get good men at Rs. 500 for the High Courts, by all means have them also for the Federal Court. As far as I can see, however, it will probably not be in our lifetime, but it may be at some time in the future when things will change so considerably that—

Mr. Zafrullah Khan : When a rupee will become worth Rs. 10!

Sir Sultan Ahmed : On the question of principle, that will be my answer. The actual figure may be settled later on; but, in principle, it should not be less than the pay of the Chief Justice of any High Court.

Chairman : I rather forgot one thing. What about pensions—after what time?

Sir Sultan Ahmed : After the age of sixty. That is the present rule, and I would continue it.

Mr. Zafrullah Khan : You can earn a full pension by 12 years' service in the High Court.

Sir Tej Bahadur Sapru : $11\frac{1}{2}$ years, I believe, is the rule for the Chief Justice and 12 years or $12\frac{1}{2}$ years for the junior Judges.

Sir Sultan Ahmed : I would maintain the present position.

Sir Tej Bahadur Sapru : That is for a full pension. There are proportionate pensions.

Sir Sultan Ahmed : As to the place of the Federal Court, I agree with my friend, Sir Muhammad Shafi, that it should be at Delhi. But it will be open to the Chief Justice, in consultation with the Governor-General, to have the venue somewhere else also, either on circuit or during certain parts of the year. That is a matter which will have to be settled in consultation with the Governor-General.

Sir Purshotamdas Thakurdas : It might go to Simla.

Sir Sultan Ahmed : I cannot say that at present.

Mr. Jinnah : Would you fix any age limit for the Judges of the Supreme Court?

Sir Tej Bahadur Sapru : Sixty-five, roughly speaking.

Mr. Zafrullah Khan : As compulsory age of retirement?

Sir Tej Bahadur Sapru : Yes, retirement not before 65. Our 60 years' rule has worked rather disadvantageously in India, though I have known Judges as old as 75 or 76 sitting in India.

Mr. Zafrullah Khan : How did the Bar like that?

Sir Tej Bahadur Sapru : The Bar liked it very well.

(The Committee adjourned at 1-30 p.m., and resumed at 2-30 p.m.)

Sir Sultan Ahmed. There are only two other points with which I wish to deal before I go to the question of jurisdiction, namely, as regards the number of the Judges, and in what circumstances they could be removed, and how.

As regards the number, as I submitted to Your Lordship and to the Committee previously, much will depend on what we propose to bring before the Federal Court. If it is going to be simply a Federal Court in the strictest sense of the term, the number of Judges may not be large; but if as has been suggested by Sir Muhammad Shafi, this Court is to have wider powers than the ordinary Federal Court, then in that case I am afraid the number will be very much larger. I will deal with this point a little later, after I have dealt with the question of jurisdiction.

So far as removal is concerned, I agree with Sir Tej Bahadur Sapru and Sir Muhammad Shafi that that should be done on an Address by the two Houses of the Federal Legislature.

Now, My Lord, as regards jurisdiction, which is really the most important part of the matter which we are discussing, it is obvious that the Federal Court must have, to begin with, original jurisdiction to settle disputes between the Federation and the States, between the Federal Government and the Provinces, between States and Provinces, and also with respect to disputes between State and State. In matters relating to the constitution, I would provide an appeal to the Federal Court itself, as has been provided for in appeals from original findings in the High Courts which exercise original jurisdiction, such as Calcutta, Bombay and Madras. A case decided by a Judge sitting on the original side can be taken on appeal to a Divisional Bench of the same High Court, and there is a further right of appeal to the Privy Council. In the constitution that we are proposing, I submit that it is desirable to provide an appeal from the decision of the Judge sitting on the original side of this Court to this same Court. Ordinarily, the number of Judges sitting on the appellate side of the Court, to hear appeals from original decisions of the same Court, is three, but that is a matter of detail. After that I would provide an appeal as a matter of right to the Privy Council in questions regarding the constitution only.

In all other maters of a Federal nature, a description of which Your Lordship has given in paragraph 9 of your Note, I agree that there should be an appeal to the Federal Court from the different High Courts, and the High Courts should have the jurisdiction which has been assigned to them in other constitutions. There is no reason why the jurisdiction of the High Court in such matters should be taken away—a jurisdiction which exists at present in other constitutions. In such cases, an appeal would lie to the Federal Court. I would not give an appeal to the Privy Council as a matter of right. It would be subject to the leave of the Federal Court; but, if this leave is refused, special leave might of course be granted by the Privy Council, and that right of the Privy Council should be preserved.

Then, My Lord, the question of an advisory jurisdiction has also been suggested by Your Lordship in your Note, similar to what we find under the Act of 1833 so far as the Privy Council is concerned. It may be very useful at times to have the advice of the Federal

Court, but I submit that it will be exceedingly embarrassing to the Federal Court, and at times their advice may work to the prejudice of the parties concerned. The Governor-General has, and ought to have, Law Officers of the Crown able and competent enough to give him the advice that he may seek; and I would respectfully suggest that the Court should not be called upon to express any opinion on matters which may be brought to it later on by a party when that party may have a cause of action. The materials before the Court for advice naturally may be one-sided, and it seems to me highly undesirable that the Court should be put in a position where the opinion ultimately may not be as satisfactory as one would expect from a Court of this kind.

Chairman: Are you suggesting, then, on the advisory jurisdiction, that any question should go direct to the Privy Council and not first to the Federal Court?

Sir Sultan Ahmed: No, My Lord; I submit that there should be no advice given by any Court.

Chairman . May I just say this with regard to that. You were saying that it was rather one-sided. I quite appreciate that criticism, and I have no doubt that it is a perfectly true criticism in some cases; but in other cases it is not one-sided, for this reason. For instance, we have several times, in the last year or two, had cases in the Privy Council from Canada; and then what happens is this, that usually this advisory jurisdiction is resorted to in cases where there is a conflict of opinion between the Province and the Dominion; and then what happens is that the questions are stated by the Governor-General, and they are debated before the Privy Council, and the Attorney-General for Canada will appear on one side, and the Attorney-General for the Province which opposes it upon the other. Thus, it is not quite one-sided in that class of case although I quite appreciate your criticism that there may be some cases where it is one-sided.

Sir Sultan Ahmed: In such cases, there will be no question of prejudice, and the Court will have full materials.

Chairman : Sometimes, indeed, we have the pleasure of seeing many Attorney-Generals, because we have the Attorney-General for Canada on one side, and the Attorney-General for Quebec, the Attorney-General for Ontario and all the other Attorneys-General. Still, I quite appreciate your point.

Sir Sultan Ahmed : In some cases it will act to the prejudice of the parties.

Chairman: Yes, I quite follow.

Sir Sultan Ahmed : In the cases mentioned by you, of course, there will be no prejudice.

Now, as regards the question of a Bill which has been introduced in the Federal Council which may violate the fundamental rights of any community or any section of the people, it was suggested by my friend, Sir Muhammad Shafi, that there should be a power in

the President of the Assembly or the Federal Legislature to refer the objection which may be raised by any section of the House to the Federal Court for advice. Of course, from the view that I have submitted on the question of the advisory jurisdiction in cases where even the Governor-General may want advice, it follows that I cannot favour any reference by the President of the Federal Legislature for advice. But, apart from that, there may be cases where valid objection is taken to the conduct of a Bill in the House. In my submission, provision should be made for that, but not in the way that has been suggested. In fact, if Your Lordship will refer to paragraphs 16 and 22 of the previous Report of the Federal Structure sub-Committee, Your Lordship will find suitable powers given to the Governor-General:—

> "16. *Governor-General's special powers.*—With regard to subjects in the administration of which the Governor-General would normally act on the advice of his Ministers, it was generally agreed that arrangements must be made whereby in the last resort the peace and tranquillity of any part of the country must be secured, serious prejudice to the interests of any section of the population must be avoided, and members of the Public Services must be secured in any rights guaranteed to them by the constitution."

That is the first safeguard here. Then, will Your Lordship turn to paragraph 22?—

> "22. *Bills affecting religion and commercial discrimination.*—The question whether Bills relating to such matters as the religion or religious rites and usages of any class of the community should require the Governor-General's previous sanction to introduction will require consideration, as will also the question of discrimination between different sections of the community in matters of trade and commerce. There was general agreement that in these matters the principle of equality of treatment ought to be established, and various methods were suggested for the purpose. The sub-Committee content themselves, however, with saying that it is one which should be further examined and discussed in consultation with the various interests concerned."

I would respectfully submit that, if there is a Bill which has been brought forward by any member in the House, which is objected to on the grounds mentioned in paragraph 22 by any section of the people in the House, there should be a reference to the Governor-General; and it will be open to the Governor-General to obstruct the further passage of the Bill, if he is satisfied that the rights of any particular community will be prejudiced. But, if the Bill is passed into an Act, I submit that that will be open to challenge when a cause of action arises—it may be after one year, it may be after two years, it may be after fifty years. But if the legislation which has been enacted by the Federal Legislature violates any fundamental rights, and is void on that ground, that will

remain void for ever—it makes no difference what the period is. There are two courses open in such cases. Either a representative suit may be brought by a number of people, challenging the validity of the Act which has been passed—but that can only be by a representative suit; or a suit may be brought by a person who may be affected by this invalid law which has been passed. I submit, therefore, that while the Bill is under discussion, or before the Bill has been introduced, there should be ample powers given to the Governor-General to satisfy himself that the Bill does not contravene any of the fundamental rights. No more than that is necessary. But after the Bill has been passed into an Act, I submit that the procedure which I have suggested might be adopted in suitable cases.

Chairman: Are you envisaging, then, as one of the clauses of the constitution, a clause setting out and defining fundamental rights?

Sir Sultan Ahmed: Yes. That is essential in my submission.

Now, My Lord, I go to the question of the jurisdiction of the Supreme Court as an appellate Court from the different High Courts or other final Courts in India, like the Chief Court of Lucknow. I entirely agree with my friends, Sir Muhammad Shafi and Sir Tej Bahadur Sapru, that it is time that a Supreme Court was established in India to hear appeals from the High Courts and the chief Courts in India. Sir Muhammad Shafi has explained fully the necessity of the establishment of such a Court. He has pointed out the burden which is thrown upon litigants in bringing their cases to the Privy Council here. But it is not so much the question of cost which presses me in asking for the establishment of the Supreme Court as an appellate Court from the High Courts in India. There are other more serious considerations why, I submit, the time has come when this question should be decided in favour of the establishment of a Supreme Court as an appellate Court. In most cases we have points which cannot be explained properly either to the solicitors or to counsel appearing, without personal explanation either by someone who has conducted the case in the lower tribunal or by someone who is familiar with the facts of the case. Those who have to practise in India realise and appreciate the value of such instructions; and I am sure I shall be borne out by my other friends when I say that cases have been lost here in the Privy Council because counsel and the solicitors were not well posted with respect to the facts. Big briefs are sent here, and counsel do their level best to master the facts stated therein; but there are here and there passages which may be exceedingly useful and to which their attention is not fully drawn. I respectfully submit that it is highly desirable that full instruction should be given in such cases, particularly when these appeals which come to the Privy Council are appeals both on facts and on law. Your Lordship is aware that the Board here usually sits with one or two members, or sometimes more, with experience of High Court work in India. That shows the necessity for Indian experience

on the Bench. That necessity being established, it would be to greatest advantage if we had those very people in India to h the other members who may be requiring the assistance of perienced brother Judges. I therefore submit that, on all groun it is necessary that this Court should be given full powers to h appeals against the decisions of the Courts in India in which t law has provided appeals to the Privy Council. My friend, S Muhammad Shafi, would, however, limit the right of appeal the Federal Court or Supreme Court in India to cases of the max mum value of one lakh of rupees. Speaking for myself, I do n see why that limitation should be imposed. Either there shoul be no appeal to the Supreme Court from the High Courts, an the present state of affairs should continue or if there is going t be a replacement of the Privy Council by vesting the power o hearing appeals from the High Courts in the Supreme Court in India, then there should be no limitation at all. I do not see why there should be any difference.

My learned friend, however, has also suggested that this Supreme Court should have the right to hear criminal appeals. He was very much overwhelmed by the fact that, though ordinary cases come up to the High Court for revision, cases in which, for instance, the death sentence has been passed, cannot be taken to the Privy Council as a matter of right. I submit, Lord Chancellor, that there is no difficulty in understanding that position. Cases which come up to the High Court on appeal are decided by a higher tribunal than the Magistracy. In some cases there is a jury, in other cases there are assessors; and therefore one right of appeal has been given to the High Court. In cases tried by the Magistracy there is one appeal provided for; and, so far as the jurisdiction of the High Court is concerned, it is not really the jurisdiction of an appellate Court in the true sense of the term. It is the jurisdiction of a Court exercising discretion, and therefore it is a modified and a very limited form of appeal. Secondly, if you provide an appeal in criminal cases to the Federal Court, I am convinced that you will have to provide at least twenty-five Judges to cope with the work.

Sir Tej Bahadur Sapru : More.

Sir Sultan Ahmed: More. Well, I am erring, as far as I can see from the comments of my friend, on the wrong side.

Mr. Zafrullah Khan : As it is, with giving them civil appellate jurisdiction, you will require at least twenty-five.

Sir Sultan Ahmed: Now, My Lord, one High Court, as far as I know, has got two Judges reserved for hearing murder cases only in that Province throughout the year.

Chairman: What Province is that?

Sir Sultan Ahmed : I think the Punjab.

Mr. Zafrullah Khan: There are very often four sitting for that purpose in two divisions almost constantly.

Sir Sultan Ahmed: Constantly throughout the year.

Chairman: In murder cases only?

Mr. Zafrullah Khan: Yes, hearing appeals in which death sentences have been passed.

Sir Tej Bahadur Sapru: It would be very interesting, My Lord, to look into the criminal statistics about murder cases in India, and the criminal litigation.

Sir Sultan Ahmed: There is another Province, Oudh, where the figure runs pretty high—that is, about 100 in the course of the year, 100 death references sent to the Chief Court. I am not taking into consideration Burma, where the record is perhaps even higher.

Sir Tej Bahadur Sapru: Burma and the Punjab are the highest.

Mr. Zafrullah Khan: And the United Provinces comes third!

Sir Sultan Ahmed: That is right. I would therefore respectfully suggest that it is unthinkable to have such cases brought to the Federal Court. Even in England, My Lord, it is only very recently that you have established a Criminal Court of Appeal.

Chairman: Yes—1907, was it not?

Sir Sultan Ahmed: Yes. Before that, there was no question of having any appeal in criminal cases.

Chairman: No—only Crown cases reserved.

Sir Sultan Ahmed: Yes, but those are only very few. In India, however, we have provided for one appeal throughout.

Mr. Jinnah: May I just interrupt. That is not correct. In the High Courts of the Presidency towns there is no appeal.

Sir Sultan Ahmed: There is an appeal in every case. I am not talking about Crown cases reserved.

Mr. Jinnah: In the High Courts in Presidency towns there is no appeal.

Sir Tej Bahadur Sapru: That is right, on the original side.

Sir Sultan Ahmed: I am talking about the High Courts on the appellate side. In Presidency High Courts, again, points are reserved by the Court in suitable cases, or a fiat is granted by the Advocate-General, and cases are taken to the Court of Appeal on his fiat.

Mr. Jinnah: Only on questions of error of law but no regular appeal.

Sir Sultan Ahmed: No regular appeal on facts, but either on a point of law reserved by the Judge or on a fiat. That is quite right. I am obliged to Mr. Jinnah.

Sir Provash Chunder Mitter: There is an appeal from the Court of Sessions.

Sir Sultan Ahmed: There an appeal has been provided whether there is a trial by jury or not.

Sir Provash Chunder Mitter: Only on a trial by jury when there is misdirection.

Sir Sultan Ahmed : But when there are assessors, both on facts and on law.

Then, another class of cases has been suggested which might be brought to the Federal Court, and those are cases of acquittals which have been brought to the High Court on appeal by the Local Government under Section 417 of the Criminal Procedure Code, and where the acquittal has been set aside and a conviction has been recorded. It is suggested that it is a great hardship that there should be no further appeal. My Lord, I do not see the difference between a case of conviction and a case of acquittal. In either case, there is one right of appeal which has been given; and once that appeal has been heard, I think there ought to be finality. I therefore respectfully submit that there is no reason shown why an exception should be made in a case where an acquittal of the accused by the lower Court has been converted into his conviction by the High Court, which alone has power to deal with matters of acquittals by trial Courts.

There is a last point on which I would like to make my submission. As regards the number of Judges who will be required for the Federal Court, considering that I am in agreement with my friends, Sir Muhammad Shafi and Sir Tej Sapru, with respect to the right of appeal against the decisions of the High Court in civil cases, I think you must provide for at least ten Judges of the Federal Court. My Lord, through the courtesy of my friend, Sir Edward Chamier, I have got the figures of appeals in civil cases in the Privy Council within the last three years. In 1928, there were 91 appeals; in 1929, 122; and in 1930, 77. On an average, you may take it at 100 a year.

Sir Tej Bahadur Sapru : Not 100. The average is very much less than that. The average works out at between 60 and 70. That is a five years' average.

Sir Sultan Ahmed: I have got three years' figures here and it is from these I take it.

Sir Tej Bahadur Sapru: 1929 was an exceptional year. Otherwise, you have anything between 60 and 70 in the course of a year—sometimes 80.

Sir Sultan Ahmed : I have only the figures of three years, and from those figures I have arrived at an average of about 100. It may be less; I cannot say. It may be 75; it may be 80; or it may be 60. Whatever it is, there is no doubt that, if an appeal is provided to the Federal Court in India, the number will increase. There is no doubt about that; we should be under no misapprehension as to that. Even then, I should think the number would not go to more than 200 or 250.

Sir Tej Bahadur Sapru: Yes, there I agree. Not more than 250. If you will permit me just for a second, may I point out

that, if you look into the statistics of the various High Court decisions, you will find that something like 70 to 75 per cent. of the decisions of the lower Courts are affirmed. Of the remaining 30 per cent., most of those cases you will find are of the value of Rs. 10,000 or below. So that the number of appeals that are likely to go to the Appeal Court is not going to be very large—it is going to be larger but not very large.

Sir Sultan Ahmed: Of the cases involving a value of less than Rs. 10,000 there will be very few in which a substantial question of law is raised.

Sir Tej Bahadur Sapru · You do not follow me. I said the number of cases which are affirmed by the High Court is about 70 to 75 per cent.; so that it is only out of that 25 per cent. where there are not concurrent judgments.

Sir Sultan Ahmed: I put it at an average of about 200 to 250.

Sir Tej Bahadur Sapru : It may be 300.

Sir Sultan Ahmed: Supposing it is 300, I submit that it would be possible for six Judges to deal with 300 cases in the course of the year. That is the reason why I have put down one Chief Justice and ten Judges—that is, eleven Judges altogether.

Chairman : Do you think they should sit in groups of three or five?

Sir Sultan Ahmed: Three. I find that, in many cases here, three Judges dispose of appeals from India. It is generally three, sometimes five, and in exceptional cases seven.

Mr. Zafrullah Khan : I hope you are keeping in mind that you will have a judgment of two Judges of the High Court which is being heard on appeal by three Judges, who will, in the case of a difference of opinion, decide the matter by a majority, and the judgment will be reversed probably by two Judges of the Supreme Court, where it has been pronounced by two Judges of the High Court. That will be the position.

Sir Sultan Ahmed: Yes. That would not, I submit, be a sufficient ground for providing in the constitution that there should be always five.

Mr. Zafrullah Khan : Not in the constitution.

Sir Sultan Ahmed: Or anywhere else.

Mr. Zafrullah Khan : It will be a rule for the Chief Justice to make.

Sir Sultan Ahmed: Taking everything into consideration, I submit that a Chief Justice and ten Judges ought to be sufficient for such a Court.

These are all the points on which I have to make my submission before the Committee.

Sir Maneckjee Dadabhoy: My Lord, This week, apparently is going to be a field-day for lawyers. I abdicated my first love about

twelve years ago. If I have any claim to-day to speak on this subject, it is only that, before I retired from the profession, I practised for a period of 40 years. I therefore cannot claim to speak with the same knowledge and direct touch to-day, with the profession, as three of my predecessors have done in the course of yesterday and to-day.

My Lord, both Sir Muhammad Shafi and Sir Tej Bahadur Sapru were perfectly correct in stating that the question of the Supreme Court has been exercising so much influence over the minds of the people during the last ten years that it has now become a very important and paramount question. My Lord, if my memory does not fail me, I think the ball was set rolling about five years ago by my friend, Sir Hari Singh Gour, in the Assembly, when he brought forward a resolution for the establishment of a Supreme Court in India.

Sir Tej Bahadur Sapru: As a matter of fact, Sir Hari Singh Gour wanted to introduce a Bill as far back as 1921, but technical difficulties were encountered. I had to deal with that matter, and the view that was taken was that an Indian Legislature had no power under the present constitution to establish a Supreme Court, and therefore it was turned down.

Sir Maneckjee Dadabhoy: You have assigned the reason correctly; and so far as the date is concerned, I stand corrected. Also, in the Council of State, an attempt was made about four years ago to introduce a similar resolution, and I confess that, at that time, I opposed that resolution with all the emphasis and power at my command. But I do admit that the times have altered; and if a Federal Constitution is to be brought into operation, I do not see how we can possibly avoid the establishment of a Supreme Court, at least for the consideration and adjustment of certain important matters.

There has been, no doubt, a substantial change in the minds of people of various schools of thought; and, though I am a great believer in the value of the Privy Council to India, I do realise the considerations which have been urged with regard to a Supreme Court. Despite what has been said on many occasions with regard to the work of the Privy Council in this country, I believe that, in the influence which the Privy Council has exercised, by the judgments which it has delivered, on the appeals which were made to it from the various High Courts of India, it has exercised a considerable influence on the character of the Bar generally in India.

Therefore, as Sir Muhammad Shafi has said, the existence of a Supreme Court for India is now a judicial necessity. How far the Indian States will like the idea of the establishment of a Supreme Court in India, we shall know when we hear what the Chancellor, His Highness The Nawab of Bhopal, and the other representatives of the Indian States have to say. But, if my judgment is correct, I do not think they are in ecstasy over the pro-

posal or that they would receive the question of the establishment of a Supreme Court with very great favour.

I was very much struck with the observations of Sir Muhammad Shafi in his preliminary speech, when introducing the discussion on the question of the establishment of a Federal Court, and I would like, *with your permission, to read a passage from* his speech :—

> " What we have to concentrate our attention upon mainly is the range of jurisdiction which the Supreme Court is to possess. In determining this range of jurisdiction, I would not limit my horizon to the immediate requirements or even *to what may be described as the near requirements of the* case. I visualise the period when the proposed all-India Federation will have risen to its full stature—when the various constituent Units . . . will have begun to entertain the fullest confidence in the Legislative, Executive and *Judicial* machinery of the Federation, and to regard it as their very own. It is true that, at present, the Ruling Princes are somewhat nervous about the position that may be created *as a result of the establishment of a Supreme* Court in India having extensive jurisdiction over the whole of the Federation."

My Lord, I have no doubt that, when the Federation has been perfected and completed, when it has reached its full stature, the prophecy of Sir Muhammad Shafi may prove correct; but to-day, *so far as the range of jurisdiction is* concerned, I am inclined to differ from the distinguished lawyers who have preceded me in the discussion to-day; I would like, in view of various considerations, *to limit the operation of the* Supreme Court to certain matters directly connected with the interpretation of the constitution and federal laws My Lord, with the greatest possible respect to such distinguished men and such distinguished lawyers, who are so well-known in our country, as my friends, Sir Tej Bahadur Sapru, Sir *Muhammad Shafi and Sir Sultan Ahmed,* I *may not be able to go* to that length; but I say, with great deference to them, that, in my humble opinion, in the present state of Indian affairs, in the present state of the financial position in India, it would be judicious and prudent not to multiply Courts. As, however, a Supreme Court will be essentially necessary, its *jurisdiction should be limited* to a range of certain questions only.

My Lord, I have given a little thought to this matter, and, in my opinion, the jurisdiction should be limited to the following matters. It should be confined, in the first instance, to all disputes between the Federation and the various Units; secondly, to disputes between the States *inter se; thirdly, to disputes between the* Provincial Units *inter se;* fourthly, between the States and the other Units; fifthly, all questions of interpretation of the constitution; sixthly, all questions of interpretation of the federal laws; seventhly, interpretation of all agreements between two or more

States; and, lastly, questions of boundary disputes between State and State who are in the Federation, and between a State and any Provincial Unit.

Mr. Jinnah: What disputes do you contemplate between the Federation and States and Provinces?

Sir Maneckjee Dadabhoy: Disputes about some internal Customs, or some boundary dispute, or something of that sort.

Chairman: Are you envisaging for a moment some question of re-adjustment of boundaries?

Sir Maneckjee Dadabhoy: No, not exactly that; but constitutional questions may arise.

Mr. Jinnah: My Lord. I understood Sir Maneckjee to say that he would confine jurisdiction first of all to the interpretation of the constitution; secondly, to the federal laws, and any question arising out of the federal laws that may be enacted by the Federal Legislature. But then he said: any disputes that may arise between the Federation and the Provinces or Units. Then he went on: between States *inter se*, between the Provinces *inter se*, and between the Provinces and the States. What disputes do you contemplate, with regard to these matters that you mention, which should be delegated to the jurisdiction of the Federal Court?

Sir Maneckjee Dadabhoy: On the interpretation of the constitution there may be differences between the States.

Mr. Jinnah: Anything else?

Sir Maneckjee Dadabhoy: There may be—I cannot say now what may happen hereafter when the Federal Constitution comes into being—there may be a hundred and one disputes of different characters which it may be difficult to provide for at this moment.

Mr. Jinnah: Do you say any dispute of whatever nature?

Sir Maneckjee Dadabhoy: No, I do not go to that extent.

Now, My Lord, in connection with this subject, various reasons have been assigned as to why the Supreme Court should be endowed with power to hear appeals from the High Courts and Chief Courts. The reasons which have been categorised are not numerous —there are not more than two or three which I have up to now heard. In the first instance, it is urged that appeals should be provided from the decisions of the various High Courts to the Supreme Court because many appeals have failed in the Privy Council owing to inability to instruct attorneys, owing to inability to give personal instructions, and to other causes. My Lord, I am aware of cases in which the Privy Council at times has not been able to do sufficient justice to Indian cases; but since the alteration in the constitution of the Privy Council, and since two men with Indian knowledge and experience have been put on the Board of the Privy Council, much of that difficulty and trouble has been removed. Of course, in the matter of the interpretation of personal laws as well as customary laws, the Privy Council

has in the past not always gone in the right direction. That trouble has now been obviated by the appointment of two lawyers of eminence during the last four years on the Bench of the Privy Council.

Sir Tej Bahadur Sapru : As a matter of fact, there are four now.

Sir Maneckjee Dadabhoy: Yes, thank you. That makes my point all the stronger. Cases which go to the Privy Council generally are with regard to the interpretation of law and statute, and important points which arise in connection with the interpretation of law and statute. It is not always that the Privy Council is concerned with questions of fact where personal instruction would be a *sine qua non.* I therefore, with great respect, differ from my eminent colleagues here, that one of the justifications for the establishment of a Supreme Court in India is this reason. Sir Muhammad Shafi gave two reasons—one about the diversity of judgments of several High Courts, and the other expenditure. I am fully aware that different High Courts, in regard to certain laws and matters, have interpreted the statutes according to their lights in a different manner, and the Provincial Courts are following the precedent laid down by their own High Court in administering their laws. But has that fact done any considerable amount of injury to the rights of the parties litigating, and does it necessitate a wholesale right of appeal—unlimited right of appeal as stated by my friends—both in civil and criminal cases, to the Supreme Court? With great respect to their learned opinion, I say it does not. Even admitting that in some cases there is a diversity of judgments, I do not think that, merely to attain an ideal of uniformity, there should be provided opportunities of further appeal in all cases to the Supreme Court. (I am now only referring to civil matters). My Lord, when I am saying this, I am speaking with some personal knowledge. Unfortunately, litigation is too rampant in India. It is the weakness of the parties.

Chairman: Are you speaking as a lawyer?

Sir Maneckjee Dadabhoy: I am speaking both as a lawyer and as a client. The country is poor, and I know the weakness of clients. I speak with the experience of a lawyer because, when I lost an appeal in the High Court, I was asked by my client, "Is there no other Court to which you can take me?" As long as there is an additional avenue open, it is my personal opinion that the litigant, however poor he may be, is sure to resort to it. I know of many a household which has been ruined over litigation in India. In many a big case which has been fought, the parties have ended up in absolute ruination. It has just been argued by our friend here that, on the statistics which he has obtained, there would not be more than 300 appeals to the Supreme Court. My friend has lost sight of an important factor. There may be 300 appeals to the Supreme Court; but one important factor has to be borne in mind, namely, that when you have the final Court of

Appeal in India itself, there will be a much larger inducement for more appeals to be instituted than otherwise. Personally, I think that, with our competent High Courts as now established, with their experienced European and Indian Judges—and there are largely Indian Judges now—on the various Benches, the decision of the High Court ordinarily is entirely sufficient; and I am of opinion that, during the initial stage of the life of the Supreme Court at any rate, we should not go to the extent of having all appeals from the High Courts to the Supreme Court. This is my personal view.

Next, both Sir Muhammad Shafi and Sir Sultan Ahmed have argued about the gross injustice which has been done by the power which is exercised by the High Court when the Government files an appeal against an order of acquittal.

Sir Sultan Ahmed: I never said that—I could not, because I fight an appeal every day myself!

Mr. Jinnah: What Sir Muhammad Shafi said was this, that in the case of an appeal which results in the reversal of an acquittal, there is undoubtedly a conflict of decisions between the lower Court and the appellate Court; and yet the man has no opportunity of going higher. In spite of the conflict, and on a question of life or death, a man has no opportunity of going higher—that is what he said.

Sir Maneckjee Dadabhoy: That very object can be attained in other ways, in my opinion. It does not necessitate an appeal to the Supreme Court. If, however, you are prepared to have an appeal to the Supreme Court only in such exceptional cases, where an order of acquittal has been set aside and a conviction made and a person sentenced to be hanged, there may be something in that; but I am also of opinion that, if such injustices take place, the difficulty could be got over by an alteration of the Criminal Procedure Code, giving power, if the party so desired, to go direct to the Privy Council. Nowadays, it is only in exceptional cases that the Privy Council interfere; but, on certification by the High Court, or something like that, there might be given a right to appeal as I suggest. There is no necessity, however, for giving a general right of appeal in all cases to the Supreme Court, simply on account of one hardship that has been pointed out.

My Lord, these are the reasons that are given for conferring a right of appeal in cases of civil disputes; but Sir Muhammad Shafi also went to the length of giving a right of appeal in criminal cases to the Supreme Court. As far as I could follow Sir Muhammad Shafi, he said there were about 300 Districts in India, and the number of criminal cases is well known to the lawyers here. If you are going to allow all this work to be thrust on the newly established Supreme Court, my fear is that that Supreme Court will never be able to do its own natural and legitimate work; and I am therefore entirely opposed to giving unlimited jurisdiction in criminal matters to the Supreme Court.

Chairman: Unlimited jurisdiction?

Sir Maneckjee Dadabhoy: I mean by "unlimited," that any person can take any case on appeal to the Supreme Court if he is dissatisfied.

Chairman: Leaving out questions of death sentences, are you in favour of giving the Supreme Court the power to increase sentences on appeal?

Sir Maneckjee Dadabhoy: Well, if you do, they will only require some other Court over it. I do not know, My Lord, whether I have made myself clear. On that point I only stated that, in a special case like that, if you wish to give a right of appeal to the Supreme Court, there may be something in that argument; but, personally, I do not agree with it. I do not say that cases of hardship or injustice have not arisen. There may occasionally arise a case of injustice or hardship; but, in the whole range of our Courts' work, that sort of injustice must occur occasionally everywhere, in every branch of the administration either of the civil or of the criminal law of the country; and that by itself, in my humble opinion, is no justification for giving this right of appeal.

Of course, when I am answering the questions raised by Your Lordship, I will refer to it; but, in this connection, I would also refer to the volume of work which will arise, and I do not think any Supreme Court with power to hear both civil and criminal appeals will be able to cope with the work unless you provide a large number of Judges. Unless you have at least twenty or twenty-five Judges, you will not be able to do the work. And what does that mean? The administration in India has already been made top-heavy in various directions. Are you going to enlarge the expenditure again by the establishment of a Supreme Court in which twenty or twenty-five highly-paid Judges will sit to do that class of work which is now ordinarily done by High Court Judges, who are perfectly able and competent to do that work? I am therefore not in favour of saddling the country, in the present state of its finances, with such uncalled-for expenditure.

Chairman: Do you envisage in your remarks any payment of Court fees by litigants?

Sir Maneckjee Dadabhoy: But, My Lord, if there is to be a civil appeal, I suppose there will be Court fees and everything else. There will be lawyers' fees and Court fees.

Chairman: I do not mean lawyers' fees, I mean Court fees.

Sir Maneckjee Dadabhoy: Of course, there will be Court fees.

Chairman: I do not want to go into details, nor do I wish to reveal confidential things; but there is one class of Court in this country which, owing to its fees, entirely pays for all its Judges. It is self-supporting. There is another class of Court which is in exactly the opposite position.

must be left entirely in the hands of the Governor-General, representing the Crown, who should, after taking various matters into consideration, fix the salaries. If it is left to the Federal Legislature, I dread to visualise what is going to happen. We have many distinguished lawyers here, and I do not think any of them would care to go on the Bench of the Supreme Court on the salaries that might be fixed by the Federal Legislature. Would Mr. Jinnah accept, even if you made him Chief Justice of the Supreme Court? Or would Sir Tej? Or would my friend Sir Sultan Ahmed? None of our best men are going to accept those salaries.

Sir Sultan Ahmed: You are getting a little personal!

Sir Maneckjee Dadabhoy: I am referring to men of your ability. Men of great ability will not accept them.

My Lord, I am glad you allowed Sir Tej Bahadur Sapru to open and discuss the larger question of the Judicature in India.

Mr. Jinnah: Sir Maneckjee, how is it that you get the most eminent lawyers in this country, making very large incomes indeed, willing to accept a seat in the House of Lords or on the Judicial Committee for £12,000 a year?

Sir Provash Chunder Mitter: Mr. Jinnah can probably answer that better than you can.

Sir Maneckjee Dadabhoy: I think Sir Provash is right; you are better able to give an explanation than myself.

Mr. Jinnah: My point is this. Is there nobody in India who might take that view?

Sir Maneckjee Dadabhoy: Well, My Lord, in the case of every gentleman who accepted the post, I know the special reasons why he accepted; but I do not like to go into personal questions.

Mr. Jinnah: You mentioned certain persons who are present here, and that is becoming personal!

Sir Maneckjee Dadabhoy: I only said that men of your ability will not take posts at such salaries. There are cases in which persons are prepared to make sacrifices, especially men who are on the eve of retirement and who have made large fortunes and who are patriotic enough to do that work; but you will not find any large number of lawyers willing to do a thing like that.

My Lord, as I was saying, it was a very appropriate thing that my friend, Sir Tej Bahadur Sapru, has opened the much larger question of the Judicature. He, with his long experience at the Bar, was just the right and proper person to speak on the subject; and I agree with and endorse many of his suggestions in that connection.

He has referred to the existing law which prescribes certain proportions for Judges of the High Court and lays down that so many appointments shall go to the Civil Service, so many to the Bar, and so on. I think the time has now passed when these appointments can be reserved in any proportion for the Civil Service, though I

fully appreciate their great work and the valuable services rendered by a large number of people, members of the Indian Civil Service, in the judicial sphere. If I correctly understood my friend, Sir Tej Bahadur Sapru, he fully appreciated the work done by those civilians, and he was against the ban being put on these people being on the High Court Benches; but he only protested, as far as I understood him, against the actual proportion. There may be cases in which Civilian Judges of great ability may be safely placed on the Bench, and they would be able to do their work with great credit to themselves and lustre to the Service. There may be such cases; and, therefore, all that I would go to the extent of stating is that the limit or proportion should be removed, but there should be no permanent bar on any class of people to hold appointments in the High Court or in the Supreme Court, though it would be much better, as I appreciate, that practising barristers would be the right and proper persons from whom the selection should generally be made. As regards the qualification, I think that no barrister and no lawyer of less than 10 years' standing should be appointed, not only in the High Court but also in the Supreme Court.

Sir Sultan Ahmed: It is 5 years now.

Sir Maneckjee Dadabhoy: Yes, it is 5 years now under the present Act, Section 101.

Mr. Jinnah: But I do not know of any case where a man of 6 years' standing has ever been appointed as a High Court Judge.

Sir Maneckjee Dadabhoy: But now that we are framing our constitution, it is natural that we should provide for everything, and should take all safeguards to provide against anything happening like that.

Mr. Jinnah: Yes, I quite agree, but I was only pointing out that it had never been done.

Sir Maneckjee Dadabhoy: As regards the age limit, I think that the present rule is too rigid. When a man has attained the age of 60 he possesses—at least this applies among the members of the Bar—ripe experience and knowledge; and so his services should be utilised at that age, and he should not be put on the shelf.

(The Committee adjourned at [illegible])

PROCEEDINGS OF THE [illegible] MEETING OF THE [illegible] STRUCTURE COMMITTEE [illegible] 11-30 A.M.

[illegible]

The Federal Court—continued.

Sir Maneckjee Dadabhoy: [illegible] at the stage at which [illegible] Committee very long [illegible]

With regard to the appointment of the Judges of the various High Courts, I am in agreement with Sir Tej Bahadur Sapru that these posts should be thrown open to all branches of the profession and should not be limited to barristers only. During the last few years, these appointments, though of a temporary character, have been held with great credit and distinction by advocates and High Court pleaders, and their work in this capacity has convinced the profession that many of its members are as good as the barristers, and in some case they have even shown superior knowledge and culture. I am, therefore, in entire agreement with the proposal that these posts, in future, should not be confined to barristers only, but that the law should be so altered as to throw open these appointments to all branches of the profession.

So far as the actual number of Judges is concerned, which is one of the questions which Your Lordship put to us, I beg to submit that it would be much better to put a provision in the new constitution on the lines of that contained in section 101 of the present Government of India Act, where it is stated that each High Court shall consist of a Chief Justice and as many other Judges as His Majesty may think fit to appoint. A provision of this nature would meet all requirements, particularly as we know that it would be difficult at this juncture, without knowing all the functions which the new Supreme Court will exercise, to decide what number of Judges will be required.

Sir Akbar Hydari: What is your exact proposal in this respect? I am afraid I did not quite follow.

Sir Maneckjee Dadabhoy: My proposal is that the number of Judges should not be fixed by any provision in the constitution, but provision should be made on the analogy of that contained in the present law.

Mr. Joshi: It will come to appointment by the Secretary of State for India.

Sir Maneckjee Dadabhoy: I have said the appointment will, of course, rest with the Crown. You cannot leave these appointments to the Legislature.

Mr. Joshi: I am referring to the number.

Sir Maneckjee Dadabhoy: The number will be settled by the Chief Justice on the basis of what is required. The Chief Justice will, of course, advise the Government, and the Government will have to inform the Secretary of State, if the Secretary of State for India still continues in office then.

Mr. Joshi: What about the money? Will it be non-votable?

Sir Maneckjee Dadabhoy: Certainly. These matters must be left entirely to the discretion of the Crown. If you go on voting on these items, there will be great temptation for the Federal Legislature to vary, not only the numbers, but the salaries and everything else; and I think, therefore, that all these matters should be

non-votable. You will cause chaos otherwise, and it will not be possible to work the Federation well and harmoniously.

With regard to the venue of the Supreme Court, I am distinctly of opinion that the capital of India should be selected, for more than one reason, and that this Court should be located at Delhi.

Chairman: I do not think you need trouble about that; there is such a consensus of opinion on the point.

Mr. Sastri: Do you think it will have to go to Simla?

Sir Maneckjee Dadabhoy: No, I do not think that will be necessary.

Chairman: You mean that it will stop at Delhi all the year round?

Sir Maneckjee Dadabhoy: There is a good deal of difference of opinion at present about this exodus to Simla; and as most of these Judges will be Indian Judges, I see no reason why they should not stop in Delhi.

Mr. Iyengar: There are vacations now.

Sir Maneckjee Dadabhoy: Yes, and they can arrange to take their vacations in the hot weather. I do not think it will be necessary to take the Judges to Simla, particularly as I believe that most of the Judges of the Supreme Court will be Indian Judges, and will not make any objection to working in Delhi. I suppose the Supreme Court will go to the expenditure of maintaining a library there at least, if they are going to do the work.

Then, as regards the appointment of a Registrar and other staff, I think the matter must rest with the Chief Justice. He is the best man for that, because he has to get work out of his staff, and he is just the proper man to know what his requirements are. He will have to get the work done, and therefore it is necessary that he should have full power. Of course, for the sake of formality, perhaps the sanction of the Governor-General will be necessary; but in the main the recommendations should, in my opinion, rest with the Chief Justice.

Then as regards the Rule-making power, of course it will be necessary to vest that power in a Committee; but that Committee, I would suggest, should always be presided over by one of the Judges—either the Chief Justice or one of the other Judges.

Now, My Lord, I am entirely in agreement with the caveat ntered by Sir Tej Bahadur Sapru as regards most of our High ourts not being efficiently manned, and the resort which has to be ade now and then to the appointment of temporary Judges as ditional Judges. I quite agree with what Sir Tej Bahadur has d, that these constant appointments, which have to be made m time to time, have a demoralising effect on the Bar. These ointments are often solicited by junior members of the proion who are very often not very competent men.

Dr. Ambedkar: You were once appointed.

With regard to the appointment of the Judges of the various High Courts, I am in agreement with Sir Tej Bahadur Sapru that these posts should be thrown open to all branches of the profession and should not be limited to barristers only. During the last few years, these appointments, though of a temporary character, have been held with great credit and distinction by advocates and High Court pleaders, and their work in this capacity has convinced the profession that many of its members are as good as the barristers, and in some case they have even shown superior knowledge and culture. I am, therefore, in entire agreement with the proposal that these posts, in future, should not be confined to barristers only, but that the law should be so altered as to throw open these appointments to all branches of the profession.

So far as the actual number of Judges is concerned, which is one of the questions which Your Lordship put to us, I beg to submit that it would be much better to put a provision in the new constitution on the lines of that contained in section 101 of the present Government of India Act, where it is stated that each High Court shall consist of a Chief Justice and as many other Judges as His Majesty may think fit to appoint. A provision of this nature would meet all requirements, particularly as we know that it would be difficult at this juncture, without knowing all the functions which the new Supreme Court will exercise, to decide what number of Judges will be required.

Sir Akbar Hydari: What is your exact proposal in this respect? I am afraid I did not quite follow.

Sir Maneckjee Dadabhoy: My proposal is that the number of Judges should not be fixed by any provision in the constitution, but provision should be made on the analogy of that contained in the present law.

Mr. Joshi: It will come to appointment by the Secretary of State for India.

Sir Maneckjee Dadabhoy: I have said the appointment will, of course, rest with the Crown. You cannot leave these appointments to the Legislature.

Mr. Joshi: I am referring to the number.

Sir Maneckjee Dadabhoy: The number will be settled by the Chief Justice on the basis of what is required. The Chief Justice will, of course, advise the Government, and the Government will have to inform the Secretary of State, if the Secretary of State for India still continues in office then.

Mr. Joshi: What about the money? Will it be non-votable?

Sir Maneckjee Dadabhoy: Certainly. These matters must be left entirely to the discretion of the Crown. If you go on voting on these items, there will be great temptation for the Federal Legislature to vary, not only the numbers, but the salaries and everything else; and I think, therefore, that all these matters should be

non-votable. You will cause chaos otherwise, and it will not be possible to work the Federation well and harmoniously.

With regard to the venue of the Supreme Court, I am distinctly of opinion that the capital of India should be selected, for more than one reason, and that this Court should be located at Delhi.

Chairman: I do not think you need trouble about that; there is such a consensus of opinion on the point.

Mr. Sastri: Do you think it will have to go to Simla?

Sir Maneckjee Dadabhoy: No, I do not think that will be necessary.

Chairman: You mean that it will stop at Delhi all the year round?

Sir Maneckjee Dadabhoy: There is a good deal of difference of opinion at present about this exodus to Simla; and as most of these Judges will be Indian Judges, I see no reason why they should not stop in Delhi.

Mr. Iyengar: There are vacations now.

Sir Maneckjee Dadabhoy: Yes, and they can arrange to take their vacations in the hot weather. I do not think it will be necessary to take the Judges to Simla, particularly as I believe that most of the Judges of the Supreme Court will be Indian Judges, and will not make any objection to working in Delhi. I suppose the Supreme Court will go to the expenditure of maintaining a library there at least, if they are going to do the work.

Then, as regards the appointment of a Registrar and other staff, I think the matter must rest with the Chief Justice. He is the best man for that, because he has to get work out of his staff, and he is just the proper man to know what his requirements are. He will have to get the work done, and therefore it is necessary that he should have full power. Of course, for the sake of formality, perhaps the sanction of the Governor-General will be necessary; but in the main the recommendations should, in my opinion, rest with the Chief Justice.

Then as regards the Rule-making power, of course it will be necessary to vest that power in a Committee; but that Committee, I would suggest, should always be presided over by one of the Judges—either the Chief Justice or one of the other Judges.

Now, My Lord, I am entirely in agreement with the caveat entered by Sir Tej Bahadur Sapru as regards most of our High Courts not being efficiently manned, and the resort which has to be made now and then to the appointment of temporary Judges as additional Judges. I quite agree with what Sir Tej Bahadur has said, that these constant appointments, which have to be made from time to time, have a demoralising effect on the Bar. These appointments are often solicited by junior members of the profession who are very often not very competent men.

Dr. Ambedkar: You were once appointed.

Sir Maneckjee Dadabhoy: I did not solicit it.

Sir Tej Bahadur Sapru: That is not confined to the juniors.

Sir Maneckjee Dadabhoy: But I think it would be better that the constitution of each High Court should be so framed that there should be sufficient men to cope with the work. I will leave that point now.

I am also distinctly of opinion, My Lord, that the appellate powers of all the High Courts should be placed on a footing of equality. Sir Tej Bahadur Sapru did point out yesterday that, in some cases, like Allahabad, Patna, Lahore and other places, the High Courts have no powers to issue writs of mandamus, habeas corpus and other writs. I think it would be to the common interest and advantage if a uniform policy were established, and that the High Courts should be put on a footing of equality as regards the powers and privileges they can exercise.

There now only remain for me one or two questions, and I will not take more than a few minutes. In the case of a Bill before the Federal Assembly which violated any fundamental constitutional principle, Sir Muhammad Shafi recommended in the course of his argument that, on representation to the President, the suspension of the debate may take place. I am not in favour of stopping the proceedings of the Federal Assembly by any interruption, through Law Courts, by way of injunctions or in any other way. I think that is not a correct procedure; and moreover, in matters of discriminatory legislation, or in matters affecting various important questions, such as religious rites or other matters, this power may be exercised under the influence of temper or passion or anything like that, and it would not conduce to the equanimity of the Legislature. My Lord, the Federal Structure sub-Committee fully anticipated this difficulty and intimated their view points in paragraphs 16 and 22 of their Report. Paragraph 22 says:—

> "*Bills affecting religion and Commercial discrimination.*—The question whether Bills relating to such matters as the religion or religious rites and usages of any class of the community should require the Governor-General's previous sanction to introduction will require consideration, as will also the question of discrimination between different sections of the community in matters of trade and commerce. There was general agreement that in these matters the principle of equality of treatment ought to be established, and various methods were suggested for the purpose. The sub-Committee content themselves, however, with saying that it is one which should be further examined and discussed in consultation with the various interests concerned."

My personal opinion is that, when an exigency like this arises, the President should refer the matter to the Governor-General, and it will be open to the Governor-General to obstruct the further passage of the Bill if he thinks it necessary to do so. Under para-

graph 16 of the Federal Structure sub-Committee's Report, we have recommended the maintenance of certain powers in the hands of the Governor-General regarding the introduction of Bills; and, My Lord, I think this would be a correct procedure to adopt in matters like this. Of course, if the Bill is passed into an Act, it will be open to challenge when a cause of action arises; and as far as I am concerned, I think there ought to be no period of limitation prescribed in these matters. In fact, it would be practically impossible, in my opinion, to fix a period of limitation. A cause of action may arise twenty or twenty-five years after the passing of a Bill. Some party's interests may be so involved that he may impugn the validity of the Act itself as offending against any part of the constitution. A cause of action might arise at a later stage. In such cases it is therefore necessary that there should be no period of limitation, and that a suit to declare the Act invalid or *ultra vires* can be brought at any stage by a party aggrieved.

Chairman: I want to follow you on that point. You say that any party ought to be able to bring a suit like that at any distance of time, no matter whether he has got any grievance himself. Supposing, we will say, twenty-five years hence, a gentleman who is rather an inquisitive gentleman, having no personal suit, reads through the Act of Parliament, says that is *ultra vires* and starts a suit—do you say he should be permitted to do that; or do you say that, when he himself has some private grievance and institutes a private suit, on such an occasion he can impugn the Act of Parliament? Because if you are going to leave it generally, as you leave it, anybody can sue twenty-five years hence for a declaration that any section is *ultra vires*, quite independently of the question whether he has any personal suit. Do you follow what I am putting?

Sir Maneckjee Dadabhoy: I fully follow, My Lord, in a private dispute, if you leave it open for an indefinite period, that is when his grievance arises, when a party's cause of action arises, that he has the remedy. It seems to me that in general matters too it would be somewhat unfair to prescribe a period of limitation. I say that for this reason. I know that, in some Statutes, we have said that the suit should be brought within a prescribed period

Chairman: I am not on that.

Mr. Jinnah: Sir Maneckjee, can you make a Statute, which is *ab initio ultra vires*, *intra vires* by the Law of Limitations?

Sir Maneckjee Dadabhoy: No; I agree with you there.

I am also of the opinion that the advisory jurisdiction should be maintained. It is a very useful power. The power of the Governor-General to refer to the Federal Court for judicial decision any question of a judicial nature should be retained. It is an essential power, and I am of opinion that this power can be safely preserved. Provision may be made, I submit, on the analogy of the Judicial Committee Act.

My Lord, I have nothing further to add.

Mrs. Subbarayan: Lord Chancellor, I intervene in this debate on a very highly technical matter with much diffidence; but, in the course of the discussion on the Federal Court, I have been struck with one matter in particular, and as I think it affects the interests of women, I feel that I must express my views on it.

It was suggested that, in legislation in which it is alleged that a question of fundamental rights is concerned, the President of the Legislature should be obliged, if the majority of the Members representing the community affected insist on it, to refer it for the opinion of the Federal Court, pending whose decision discussion must be suspended. I do not desire to say anything about the legal or technical aspects of this suggestion; but it seems to me that a power of this indefinite and sweeping kind might be invoked to block progress on matters of social welfare. I have been thinking of it in connection with social legislation, in which I am deeply interested, and I feel that there is strong ground for criticism of this proposal from that point of view. I feel that there is very urgent need of social legislation if we are to achieve national progress in India. Certain aspects of social legislation, however, are liable to be regarded by the very orthodox of any community as affecting the fundamental rights of religion. In particular, legislation to alter or improve the position of women sometimes arouses the cry that religion is in danger. Take, for instance, measures like the Widow Marriage Act, or the more recent measure known as the Sarda Act, passed by the Central Legislature, the Devadasi Act, or the more general measure, the Hindu Religious Endowments Act, passed by the Provincial Legislature of Madras. If one looks back on these measures, now generally regarded as wise and necessary, one realises that, if this provision for referring such matters by injunction to a Court of Law had been in force then, they would have been subjected to great delay. I fear very much that such a provision will lead to the blocking, perhaps the continuous blocking, of reformative measures, and great delay and expense in getting them through both Legislatures and Courts. The provision may be very liable to general abuse. It may become a powerful weapon in the hands of any party that wishes to pursue purely obstructive tactics. It might even continuously block legislation. I therefore feel very strongly that the proper remedy, for those who think that their fundamental rights are affected by any particular Bill, lies in the ordinary Courts of Law after that Bill has become law. If there is a real contravention of fundamental rights, the Court of Law will see that justice is done. This would prevent dilatory or obstructive tactics in the Legislature.

I think these remarks also apply to the suggestion made by Sir Maneckjee this morning. My desire is that there should be no complicated machinery which could be used to obstruct the passage of any measure for social legislation.

Sir Maneckjee Dadabhoy: That is what I said this morning. The power should be maintained in the Governor-General to obstruct the passing of any such Bill.

Mrs. Subbarayan: I do not want any power which will obstruct the passage of such a Bill; and it will also be putting the Governor-General in a difficult position.

Sir Maneckjee Dadabhoy: The Governor-General has even now got powers under which a Bill must be submitted to him.

Mr. Iyengar: That is on questions of danger to public safety. That is the only power he has now.

Sir Maneckjee Dadabhoy: All the Bills have to be submitted to him for his sanction. That is the power preserved even to-day. He may refuse his sanction to-day.

Mrs. Subbarayan: That is before the Bill is introduced, not during the course of the passing of the legislation. I do not know all the legal technicalities, of course.

I make these few remarks, Lord Chancellor, entirely in the interests of social legislation in general, and in particular of social legislation affecting women. I hope the Committee will appreciate *the importance of facilitating social legislation as much as possible* for the sake of our national progress.

That is all I have to say.

Sir Mirza Ismail: Lord Chancellor, I have been asked by the Indian States *Delegation to state their views with regard to the* proposed Federal Court. They recognise that such a Court is necessary in order to enable the Federation to function properly and to reassure the federating States that their rights will be adequately safeguarded under the new constitution. The manner in which the Federal Supreme Court should be brought into existence requires some consideration. The States naturally attach great importance *to the principle that the creation of the Federal Court should not* affect their sovereignty in any degree. It will be necessary, therefore, to make it clear that the Federal Court derives its jurisdiction, not from the Crown alone, but from the Federating States as well.

The primary function of the Federal Court would of course be to deal with cases arising under the constitution and federal laws; but some of us feel that, with the consent of the State or States concerned, it may be made possible for the Court to adjudicate in disputes of a justiciable nature between States and British India, *or between State and State, even in non-federal matters such as* boundary disputes, rights of irrigation, etc. It is of course understood that in any case, as Your Lordship has clearly indicated, questions of paramountcy, which would be reserved to the Crown under the proposed constitution, would necessarily lie outside the purview of the Federal Court. We feel sure that the *judicial* talent and experience available in the States will be utilised in *making appointments to the Federal Supreme Court* —

Having made these general observations, I proceed to give categorical replies on the several points referred to in the questionnaire.

The first question is:—

> "Should members of the Federal Court be appointed by the Crown and on what tenure?"

Our reply is that Judges of the Federal Court should be appointed by the Crown as the head of the Federal State, and that tenure should be during good behaviour, subject to an age limit. They should be removable by the Crown on an Address from both Houses of the Legislature in the same Session, praying for such removal on the ground of proved misbehaviour or incapacity.

The second question is:—

> "Should the Court have an original and an appellate jurisdiction or only an appellate?"

The Court should have both original and appellate jurisdiction, as explained in the replies to questions 3 and 4 below.

The third question is:—

> "Should the Court have an exclusive original jurisdiction, *e.g.*, in the following matters (non-justiciable matters being excluded)—
>
> (*a*) disputes between the Federation and a State or a Province in any matter involving the interpretation of the constitution;
>
> (*b*) disputes between two States, two Provinces, or a State and a Province, in any matter involving the interpretation of the constitution;
>
> (*c*) the interpretation of agreements between the Federal Government and a State or a Province, or between two States or two Provinces, or between a State and a Province, and any question arising thereunder."

Our answer is that the Federal Court should have exclusive original jurisdiction in these matters.

The next question is:—

> "Should the Court have an exclusive appellate jurisdiction from State Courts and Provincial High Courts, *e.g.*, in any matter involving the interpretation of the constitution."

The Federal Court should have exclusive appellate jurisdiction from both the State Courts and Provincial High Courts only in cases in which a point of Federal law is involved or in which any issue arises under the constitution.

The fifth question is:—

> "Should provision be made for special references by the Governor-General to the Court as under Section 4 of the Judicial Committee Act, 1833?"

Our answer to this question is in the negative.

The next question is:—

> "Should there be a right of appeal from the Federal Court to the Privy Council as of right or by leave of the Court, the right of the Crown to grant special leave of appeal to be preserved in all cases?"

Our answer is that, so far as the Indian States are concerned, there cannot be any appeal to the Privy Council whether as of right or by special leave. Such an appeal would imply the subordinating of the States participating in the setting up of the Federal Court to a tribunal which derives its authority exclusively from the Crown; and therefore no appeal should lie even by grant of special leave by the Crown.

The last question is:—

> "What provision should be made for the enforcement of the judgments of the Courts in the States and in the Provinces respectively?"

The lower Courts would execute the decrees of the Federal Court, with the help, if necessary, of the Governments concerned. There is, however, no objection to investing the Viceroy with power to enforce compliance in the last resort.

That finishes my statement.

Chairman: There is only one point I want to ask you about in order to be clear. I gather you said the States would not at present be willing to allow any appeal to the Privy Council, either as of right, or by leave of the Federal Court, or by the exercise of the King's prerogative, giving the leave to appeal?

Sir Mirza Ismail: Yes.

Chairman: I rather gather that the reason for that is this, that they would be referring questions to a tribunal which was appointed by people outside them. I venture to suggest for your consideration—and only for your consideration—this point. The reason why the States would be willing to go to a Federal Court would be because, in the exercise of their sovereign power, they would consent and confer jurisdiction upon that Court. They could also by reason of the exercise of their sovereign power agree to confer jurisdiction on the Privy Council, should they be willing to do so. I do not want you to answer anything. All I am saying is this. The reason why you say "We will go to the Federal Court" is because you will, so to speak, exercise your sovereign power by giving consent to the jurisdiction. I only venture to suggest for your consideration, and not for an answer now, that you could, in just the same way as you confer that jurisdiction, by the exercise of your sovereign power, on a new Court like the Federal Court, also confer it on the Privy Council.

Mr. Gandhi: I should like to put a question to Sir Mirza Ismail, if I may. Sir Mirza, do you contemplate in any circumstances any right of appeal on the part of the subjects of Indian States to this Federal Court?

Sir Mirza Ismail: I think so, Mahatmaji. In regard to matters arising under the constitution or federal laws they would, in the ordinary course, have the right of appeal to the highest judicial tribunal competent to deal with such questions.

H.H. The Maharaja of Bikaner: My Lord Chancellor, After the lucid explanation given by my friend, Sir Mirza Ismail, which represents the views generally of the States Delegation, there is no necessity for me to go over the same ground again, except to express my personal general agreement with the views Sir Mirza Ismail has put forward on our behalf. The point which Your Lordship has just raised will no doubt be considered by our Delegation in due course. I am asked to make one point clear in regard to the reply we have given to question 4. That had been settled, but evidently there is a slip as to one sentence. The question was:—

> "Should the Court have an exclusive appellate jurisdiction from State Courts and Provincial High Courts, namely, in any matter involving the interpretation of the constitution?"

The reply given by Sir Mirza Ismail is:—

> "The Federal Court should have exclusive appellate jurisdiction from both the State and Provincial High Courts only in cases in which a point of federal law is involved or in which any issue arises under the constitution."

The words I am asked to suggest should be added are words which I think the Delegation had intended, but there has been a slip. They are these words:—

> "except in matters which, though federal, are administered by the States themselves."

Beyond this, Sir, I do not think there is anything for me to say except that we prefer the name Federal Court to Supreme Court, because we want it for Federal purposes. With regard to that Court, I simply want to say this, that, as in matters affecting constitutional issues or financial issues, so in regard to the Federal Court, it will be necessary to make it clear that, beyond what the States Delegation have said and what is agreed upon hereafter by the States, the Federal Court should not be taken as implying anything as accepted by the States in regard to other matters which affect the sovereignty and the internal autonomy of the States. That is the only other point which I wish to make clear.

Now, Sir, I am leaving tomorrow. I am very sorry to have to leave before this Conference and the Committee work is concluded; but unfortunately I must do so on the grounds of health. Medical advice is very insistent that I must not stay here during the winter, and there are other pressing State matters requiring my presence in my State. May I take this opportunity of tendering to you, My Lord Chancellor, once again, my own grateful thanks and my respectful tribute—which view is shared by all on this side, as on the other side—for the very great courtesy, the patience and the sym-

pathetic manner in which you have handled all these problems. I wish also to thank our friends, the British Delegates here, and especially the Secretary of State, who we hope will be able, in non-federal matters also, to write another chapter in the history of the States and our relations with the Crown. I further beg to thank all British Indian Delegates for their very great courtesy and the understanding manner in which the vast majority of our British Indian brothers have understood the difficulties and the standpoint of the States and have tried to meet us, as I hope they have found we have tried to meet them. My thanks are specially due to *Mahatma Gandhi*, who, may I say again, we are so glad to see amongst us this year.

I think it is quite unnecessary for me to reiterate my strong faith in federation. Even though I shall not be here, I hope to do service to this Committee and to this Conference and to the great work before us in India with my brother Princes and others, when I get back. I do think we should not be disappointed by any measure of disagreement here and there which we meet. I do not believe that the settlement of these questions, the drafting of a constitution, and putting it into effect, will be beyond human ingenuity or the statesmanship of His Majesty's Government, and our British friends here. With the co-operation and understanding between British Indians and the States, which this Conference has greatly helped to promote, I hope we shall be able before long to see the scheme of federation launched and brought into existence. But, My Lord Chancellor, there will yet be some more points—for instance, what you referred to the other day as "loose ends." I do beg Your Lordship and our British friends and His Majesty's Government to realise that further delay in these matters will be disastrous to the Empire, and to India, including the States, and to all of us. I do hope next time we shall not be meeting here, or elsewhere, with such a large Conference. I hope we shall be encouraged by the great measure of agreement which is undoubtedly manifested, in spite of certain differences, which, I repeat, I hope will be settled in some way or other. Where there is a will, there is a way. I hope we shall have the pleasure of welcoming you, My Lord Chancellor, in India, with a strong but small group of friends and supporters of federation from His Majesty's Government and the various British political parties; and that, by the spring, when the Chamber of Princes will also have met, there shall be ready an agreed scheme which, I hope, will be put through by Parliament. I think, Sir, beyond tendering my personal thanks on this occasion also to all my colleagues, Their Highnesses and the various Ministers with whom I have been so long associated, it only remains for me to say that I leave full of confidence in our leader, His Highness, the Chancellor of our Chamber of Princes; and I hope the Indian States will be able further to contribute towards reaching the goal which we all have in view.

Chairman: Your Highnesses and Gentlemen, I am sure I am only interpreting the wish of all of you when I say we should

record our great thanks to His Highness of Bikaner for the assistance and advice which he has given us throughout these proceedings, not only now but on the last occasion when we had the pleasure of meeting him. He is gifted, if he will allow me to say so, with great powers of speech and great powers of expression; but I know that he has had to work very hard in the evening and in the early mornings too, in order to place before us his views, which have been so very helpful. It reconciles us a great deal to the difficulties we have had when we remember the courtesy and the skill with which he has endeavoured to solve them. I do not think people outside this room realise the very great progress that we have made. As a matter of fact, the measure of agreement has been very large. I should think, upon the majority of things, we have come to an agreement. With regard to one or two rather difficult questions, I do not for a moment say we have disagreed. With regard to them all I say is we have not yet come to an agreement. I am very hopeful that, upon those matters, we shall come to an agreement, as we have done with regard to a great many of the other matters. It only remains to wish His Highness a safe return to his native country and also a speedy restoration to the good health which he generally enjoys.

Head 4.

Distribution of Financial Resources between the Federation and its Units.

Discussion on the Report of the Federal Finance sub-Committee—(concluded).

Lord Peel: Lord Sankey, May I take advantage of this general and admirable spirit of harmony, which now seems to be prevailing in the Federal Structure Committee, to make one or two observations and to make one or two suggestions about the Report of the Finance sub-Committee. I may say that these suggestions are largely founded on discussions that have taken place, as is generally known, during the last few days. I do not think there will be anything at issue on the first suggestion, because really it has already been accepted; and that is that this Federal Structure Committee should agree that the principles set out in the Report of the Finance sub-Committee should be accepted as a general basis on which this part of the constitution is to be drafted. I think probably that will be accepted for this reason, that a general approval has been expressed already of the principles contained in that Report, and, in fact, the main criticisms were directed to the proposals connected with the setting up of the Expert Committee, because it was feared that that Expert Committee might have a little too much latitude and might interfere with some of the admirable principles that were laid down by the Finance sub-Committee. By implication, therefore, the very criticisms brought against those proposals seem to approve of the principles in the Finance sub-Committee's

Report; and I think, perhaps, on that ground there will be general assent to the principles set out in the Finance sub-Committee's Report.

Now I come to matters which have been rather more controversial. I need not, perhaps, remind the Federal Structure Committee that our previous *suggestions was that there should be two Committees for dealing with some of these matters, with a Chairman who would be the same for* both Committees. It is not really necessary, I think, to press that part of the suggestion—it may ever be more convenient that the Committees should operate separately, but the suggestion I am putting forward is this. There should first of all be a small impartial Committee which should investigate the questions connected with the States' contributions, ceded territories, *the position of the Maritime States, and so on. Now, the question of the Maritime States need not necessarily be settled,* I think, before the Bill becomes an Act; but the other matters—the question of the States' contributions and the ceded territories—have to be gone into, and gone into carefully. The first suggestion is, therefore, that this small impartial Committee shall deal with those problems and, of course, report as quickly as possible. I am bearing very much in mind what has been said about delay, and I think *everybody will see that these suggestions are made with a view to minimising any possible delay and getting the business* done as quickly as possible.

The second Committee suggested to be set up is to some extent varied from the original proposal. It was to be a Committee which should deal with the various problems submitted to it, and might have some freedom even to make alternative suggestions on matters of principle. Well, there was a good deal of anxiety expressed in some quarters that that might, I will not say lead to the tearing-up *of the principles set out in the Finance sub-Committee's Report,* but at least might give too much latitude to *that Committee.* The new suggestion cuts down considerably the functions of this Committee, and limits its powers. It is suggested that it should be a fact-finding Committee, to be appointed in India, consisting of officials familiar with questions of finance, including, of course, States' finance.

Now, I was not going to make any suggestion for the moment *as to the precise reference of this Committee, but it would clearly* have to deal with and *report upon* such subjects as the *division* of pension charges, and the question of the classification of the pre-Federation debt as contemplated in paragraph 6 of the Finance sub-Committee's Report. It would also have to calculate the effect upon the Provinces of various matters—and they are very few really, I think; two or three at the utmost—such as allocating *the proceeds of the Income-tax to the Provinces.* These matters would not take *very* long; and then it would have *to try to give a* general estimate of the financial position of the Federation in its earlier years, and it would also have to show what was the result of making Corporation tax, Commercial Stamps, Tobacco excise

and perhaps other excises, Federal subjects. I think there is no doubt that this Committee could do its work very quickly. I suppose it would be possible, if necessary, to fix a time limit within which it should report.

When you have got these facts together, certain questions would have to be decided which can only be decided in the light of the facts as found by that Committee. There would be such subjects as the exact detailed form of the list of Federal taxes, and a final decision would have to be taken about Corporation tax and any specific Federal excises. Then there would be the initial amount of the Contributions from the Provinces, and the precise period within which these and the States' contributions should be wiped out, and the precise method according to which Income-tax would be returned to the Provinces.

Now, when these matters are decided in the light of the facts found by the Committee, the question would arise—and that question has been asked by Sir Tej Bahadur Sapru, among others—as to how or in what way the parties concerned should be consulted. One proposal has been made that a small Committee of the Conference might be set up to deal with those matters; but, after very careful consideration, the view of the Government is that it would be a mistake at the present moment to decide or settle upon the exact form and method which these consultations should take. Their view is that it would be far better to wait till nearer the end of the Conference, for this reason, that these are not the only points which may have to be considered after the Conference is over. There may be, and very likely will be, other points of substance affecting the Federation which will not have been decided when the Conference closes. I think it is obvious that, with the great range of subjects which have to be dealt with, some of these matters will still be left over. I am alluding now—and laying stress upon the fact that I am only alluding—to matters of importance affecting the Federation. The Government are prepared, before this Conference closes, to make proposals as to the procedure for consultation on such matters. This procedure, of course, must be followed in the interval before the new Government of India Act is passed. What I should like to make quite clear is this, that there will be no delay in this case, because the drafting of the measure can go on. There would be no delay, therefore, in the drafting of the measure; but the Government will make it quite clear, before the end of the Conference, what, in their view, is the best method of consulting the parties concerned on these proposals.

I hope that these suggestions will meet the views which have been expressed by the members of the Committee. I can sum them up very shortly.

There is, first of all, the general acceptance, as a basis for drafting the Bill, of the principles laid down by the Finance sub-Committee. Then there are these two Committees to be set up, the one a small body dealing with the question of the States, and

the other a fact-finding Committee which can get to work rapidly and provide the material on which final decisions are taken. Then, before the end of the Conference, the Government must state its proposals and make its own recommendations as to the best method of consulting the parties concerned on the few points which may be left over to be decided after these Committees have reported.

I put these proposals forward, and I hope they will meet with general acceptance by the Federal Structure Committee. I think it will be seen that very considerable efforts have been made to meet those difficulties which have been raised by members of the Federal Structure Committee and to produce a scheme which will conduce to that general harmony of which His Highness of Bikaner has so eloquently spoken. I hope these points will be favourably considered and accepted by this Committee.

Chairman: We are very much obliged to Lord Peel. Certainly great strides have been made towards coming to an agreement, and I think the differences have nearly all been composed. I hope we shall do our best to accept that.

Sir Akbar Hydari: My Lord, I entirely endorse what Lord Peel has said; and this represents what was really in our minds.

Dr. Ambedkar: I should just like to say one thing. Lord Peel said just now that there was general agreement regarding the principles enunciated in the Report of the Federal Finance sub-Committee. Now, whatever may be the view of the other members of the Federal Structure Committee, I should for myself like to make this reservation, that I certainly do not agree with the principles enunciated by the Federal Finance sub-Committee; and I should for myself like to say that I have no objection to the appointment of this Committee, provided it is distinctly understood that the Committee has a right to suggest alterations and amendments of the principles, in order that the future financial system for the Federal Government may be a sound system.

Mr. Gandhi: I should like to say a few things, Lord Chancellor, with your permission. I have very serious misgivings about the result of this proposed Committee, although the scope of it has been very considerably altered, and therefore it is less open to objection. I would, however, in order not to press my objection at this stage, suggest, along the very lines [illegible] by Lord Peel, that this question might be taken up at a later stage when we are about to gather the loose ends. He says—I think, very properly—that His Majesty's Government cannot at the present stage say what would be the machinery adopted in order that the conclusions of the proposed Committee might be examined [illegible] Committee or some body that would be in a way representative of the Round Table Conference. I think that is a very [illegible] objection. There will undoubtedly be several matters [illegible] the time the deliberations of this Committee and of the [illegible] Session of the Round Table Conference are concluded.

If rumour in this case is not baseless, we may hope that November 10th will be the final day of our sitting—I mean the sitting of the Round Table Conference also—and, if that is so—and I hope it is so—there would be things left over with regard to certain details, and perhaps also with regard to fundamental principles, for which some machinery will have to be devised. It might then be proper to endorse the appointment of the Committee which Lord Peel suggests, and which His Majesty's Government seem to desire; and, if that is done, my objections need not be pressed. But, at the same time, I should like to state my objections.

As members are aware, on behalf of the Congress there is a claim or demand that there should be an impartial investigation of these obligations, financial and fiscal, that the National Government will be called on to shoulder. It seems to me it would be putting the cart before the horse for me, representing the Congress, to say there should be an allocation of these debts, and that an Expert Committee should be called upon to make that allocation, when I know that at some stage or other I would be raising objections to the obligations themselves. If that Committee knew that the obligations were not so formidable as they appear to be to-day, their allocation would be of a different character; or, if they are absolutely rigid and not a rupee is to be taken away from them, that also would affect the character of the allocation. I have therefore the gravest misgivings as to the results of the deliberations of that Committee, and as to the action that I would then be justified in taking on behalf of the Congress.

My second objection is that this Committee, although its scope will be restricted, will really be doing the work that the National Government or the Federal Government should do. If His Majesty's Government feel insecure as to the ability of the Federal Government to discharge its obligations from the sources of revenue that will be accepted as common, surely there are other methods of giving them a sense of security as to the ability of the National Government to cope with the obligations that might legitimately fall on its shoulders. It cannot be done, in my humble opinion, through a Committee of this character.

When I agreed roughly to the sources of revenue to be common, I had in mind undoubtedly that I should be able to press for total repeal of the Salt tax, merely by way of instance; but I should not in any way bind myself even to the other taxes. I know that legally I do not do so; but if there is a recommendation on the part of the Committee, or if there are some calculations based upon the rigidity of the taxes that are enumerated there, I should again feel that I had not done justice to the cause that I represent.

Therefore, for these three reasons, I have very grave misgivings as to giving my consent to the appointment of this Committee and then finding myself debarred from raising objections of a fundamental character. So what really would please me, as representing the Congress, is that this matter might be left over entirely for the

al Government to investigate and decide. It should be n just now for His Majesty's Government to know and feel tely reassured—and for that they are entitled to any assur-, legal or otherwise, that they may desire—but this delicate g (to me it is a delicate thing) should be left over to the onal Government. For these reasons, if this Committee wishes xpress an opinion on the point now instantly, then I must press se objections of mine. Otherwise, in order that we may have agreed settlement in this matter, I would suggest that the matter y be for the present left over, so that, by the time we approach e end of our labours, we shall all be in a better position to make p our minds.

Sir Samuel Hoare: Lord Chancellor, There are two observations that I should like to make in response to what Mr. Gandhi has just said. I say at once that I welcome the conciliatory spirit with which he seems this morning to have approached the question of our difficulties. The first observation I wish to make is in connection with what he said about the Conference coming to an end on November 10. I should not have made any comment upon that observation were it not for the fact that, in one of the newspapers to-day, there is a statement—which I dare say a good many members of the Committee have already seen—in which it is definitely said that His Majesty's Government have decided to break up the Round Table Conference and to bring it to an end in the second week in November. I should like to say, on behalf of His Majesty's Government, that there is not a word of truth in that statement. The Prime Minister himself is making a disclaimer in the Press in the course of the next hour or two; but I wish, upon this, the first occasion that I have, to tell my colleagues of this Committee that nothing is further from our mind. We are perfectly prepared to go on with the work of the Round Table Conference as long as you and we think that a useful purpose can be served by our deliberations. We have not the least intention of bringing it to a permature end. Therefore any rumours about a particular date, such as those mentioned by Mr Gandhi this morning, really, so far as His Majesty's Government are concerned, have no foundation whatever.

The next observation I should like to make is this. It seemed to me, listening to Mr. Gandhi just now, that he was anxious—and from his point of view naturally anxious—to state his misgivings, and to put in a caveat from the point of view of those whom he represents in India as to the procedure; but I did not gather from him that he definitely wished to oppose the compromise suggested by Lord Peel. I hope that that is so; and I do sincerely think that if, in expressing his misgivings, he will none the less allow the compromise to go through this morning, he is not in the least compromising his own position. The question that he raised—namely, the question as to whether the Federal Government should, in whole or in part, be responsible for the "Imperial" debt—is a question that seems to me to have nothing whatever to do with

the work of the two Committees that we are discussing now. That is a very big question, and he and I will be the first to admit it is a very controversial question; but I do suggest to him that it does not really come up upon the proposals of these two Committees that we are discussing this morning. I would therefore ask him not to press it at this stage. No doubt, a time will come during our discussions in which we must debate it; but I venture to suggest to him that this is not the stage, and that that proposal really has nothing whatever to do with these two Committees. I would therefore venture to reinforce what Lord Peel has just said—to express the hope that, now that we have reduced our points of difference to such a minimum, we should agree with the suggestions that he has made and accept the recommendations of the Finance sub-Committee upon that basis.

Mr. Jinnah: I just want to say one word. I want to understand one point. After the Committees have made their Reports, I understand that some proposals will be formulated by His Majesty's Government. I understood Lord Peel to use the expression "decisions will be taken," and then the interests concerned will be consulted, and the procedure by which they will be consulted will be announced later on. I did not quite see the force of the words "final decisions." If I am to understand this to be the meaning—that, after the Committees have reported, His Majesty's Government will formulate their proposals and consult the parties concerned before any final decision is taken, then I accept it.

Sir Samuel Hoare: I did not understand Lord Peel's use of the word "decisions" to mean anything final. What I did understand him to mean was that it would be the provisional conclusions of the Committee. Quite obviously they would not be final decisions.

Sir Tej Bahadur Sapru: So far as Lord Peel says that the principles set out in the Report must be accepted as a general basis, I have no exception to take. That has been my position all along. Coming, then, to the Expert Committee, I hope Lord Peel will correct me if I have wrongly understood him. I understood Lord Peel at the present moment to suggest that this Committee—call it by whatever name you like; Expert Committee or a Committee of Competent Persons, or anything you like—is going to work out the details in accordance with the recommendations contained in his Report. If that be his meaning, then I have no objection. But if what Lord Peel means is that this Committee should be also at liberty to replace any principles laid down by him in his Report or to vary any principles, then, frankly, I will not agree.

Lord Peel: May I interrupt for one moment? I think I did explain, did I not, that that was the very point I wanted to meet. We were trying to meet Sir Tej Bahadur Sapru's objection, and that was the reason for the close limitation set out in the powers of the Committee. It was all to meet you, Sir Tej.

Sir Tej Bahadur Sapru: Then I take it that what Your Lordship suggests now is that this fact-finding Committee will only find facts in accordance with the principles laid down in the Report?

Lord Peel: Yes.

Sir Tej Bahadur Sapru: Well, if that be so, I have no objection at all; but again I should like, like both Mr. Gandhi and Mr. Jinnah, to be satisfied in regard to the procedure that is to be adopted for coming to final decisions, because I take it, after the point was raised by Mr. Jinnah, that it was not intended to come to any decisions immediately after the Report has been submitted, but to arrive at tentative proposals, and that those tentative proposals will be laid before a Committee or before the whole Conference, or that you will devise some sort of machinery in order to arrive at final decisions. If that be the understanding, then I have no objection at all.

Mr. Gandhi: But it is clearly subject to the principles that Lord Peel himself adumbrated.

Sir Tej Bahadur Sapru: As regards the other Committee suggested by Lord Peel, I have no objection to that.

Chairman: I think the position now is that, thanks to the tact and good sense of the parties, we have arrived at a compromise which is a workable compromise; and we are very much indebted to Lord Peel and those who are associated with him for having brought us this happy result. I quite appreciate Mr. Gandhi's caveat, and that will appear in the record of the proceedings; and I also appreciate Dr. Ambedkar's caveat. That, however, does not prevent us at all from accepting this very helpful compromise. We have made a very long step forward towards our future work. We will report in that sense; and let me express, at any rate, my personal thanks and your personal thanks to Lord Peel and the sub-Committee.

(*The Committee adjourned at 1-5 p.m. and resumed at 2-30 p.m.*)

HEAD 8.

The Federal Court—(continued).

Dr. Ambedkar: Lord Chancellor, It seems to me that, in considering the establishment of a Federal Court in India, there are three questions with which we are mainly concerned. The first question is the jurisdiction of the Federal Court; the second, the enforcement of the judgments and decisions of the Federal Court; and the third, the organisation of the Federal Court. I propose to offer a few remarks on each of these heads, and the first head that I propose to take for consideration is the jurisdiction of the Federal Court.

It is an accepted proposition that one of the functions of the Federal Court is to interpret the Federal Constitution. The distinguishing feature of a federal government, as contrasted with a

the work of the two Committees that we are discussing now. That is a very big question, and he and I will be the first to admit it is a very controversial question; but I do suggest to him that it does not really come up upon the proposals of these two Committees that we are discussing this morning. I would therefore ask him not to press it at this stage. No doubt, a time will come during our discussions in which we must debate it; but I venture to suggest to him that this is not the stage, and that that proposal really has nothing whatever to do with these two Committees. I would therefore venture to reinforce what Lord Peel has just said—to express the hope that, now that we have reduced our points of difference to such a minimum, we should agree with the suggestions that he has made and accept the recommendations of the Finance sub-Committee upon that basis.

Mr. Jinnah: I just want to say one word. I want to understand one point. After the Committees have made their Reports, I understand that some proposals will be formulated by His Majesty's Government. I understood Lord Peel to use the expression "decisions will be taken," and then the interests concerned will be consulted, and the procedure by which they will be consulted will be announced later on. I did not quite see the force of the words "final decisions." If I am to understand this to be the meaning—that, after the Committees have reported, His Majesty's Government will formulate their proposals and consult the parties concerned before any final decision is taken, then I accept it.

Sir Samuel Hoare: I did not understand Lord Peel's use of the word "decisions" to mean anything final. What I did understand him to mean was that it would be the provisional conclusions of the Committee. Quite obviously they would not be final decisions.

Sir Tej Bahadur Sapru: So far as Lord Peel says that the principles set out in the Report must be accepted as a general basis, I have no exception to take. That has been my position all along. Coming, then, to the Expert Committee, I hope Lord Peel will correct me if I have wrongly understood him. I understood Lord Peel at the present moment to suggest that this Committee—call it by whatever name you like; Expert Committee or a Committee of Competent Persons, or anything you like—is going to work out the details in accordance with the recommendations contained in his Report. If that be his meaning, then I have no objection. But if what Lord Peel means is that this Committee should be also at liberty to replace any principles laid down by him in his Report or to vary any principles, then, frankly, I will not agree.

Lord Peel: May I interrupt for one moment? I think I did explain, did I not, that that was the very point I wanted to meet. We were trying to meet Sir Tej Bahadur Sapru's objection, and that was the reason for the close limitation set out in the powers of the Committee. It was all to meet you, Sir Tej.

Sir Tej Bahadur Sapru: Then I take it that what Your Lordship suggests now is that this fact-finding Committee will only find facts in accordance with the principles laid down in the Report?

Lord Peel: Yes.

Sir Tej Bahadur Sapru. Well, if that be so, I have no objection at all; but again I should like, like both Mr. Gandhi and Mr. Jinnah, to be satisfied in regard to the procedure that is to be adopted for coming to final decisions, because I take it, after the point was raised by Mr. Jinnah, that it was not intended to come to any decisions immediately after the Report has been submitted, but to arrive at tentative proposals, and that those tentative proposals will be laid before a Committee or before the whole Conference, or that you will devise some sort of machinery in order to arrive at final decisions. If that be the understanding, then I have no objection at all.

Mr. Gandhi: But it is clearly subject to the principles that Lord Peel himself adumbrated.

Sir Tej Bahadur Sapru: As regards the other Committee suggested by Lord Peel, I have no objection to that.

Chairman: I think the position now is that, thanks to the tact and good sense of the parties, we have arrived at a compromise which is a workable compromise; and we are very much indebted to Lord Peel and those who are associated with him for having brought us this happy result. I quite appreciate Mr. Gandhi's caveat, and that will appear in the record of the proceedings; and I also appreciate Dr. Ambedkar's caveat. That, however, does not prevent us at all from accepting this very helpful compromise. We have made a very long step forward towards our future work. We will report in that sense; and let me express, at any rate, my personal thanks and your personal thanks to Lord Peel and the sub-Committee.

(The Committee adjourned at 1-5 p.m. and resumed at 2-30 p.m.)

HEAD 8.

The Federal Court—(continued).

Dr. Ambedkar: Lord Chancellor, It seems to me that, in considering the establishment of a Federal Court in India, there are three questions with which we are mainly concerned. The first question is the jurisdiction of the Federal Court; the second, the enforcement of the judgments and decisions of the Federal Court; and the third, the organisation of the Federal Court. I propose to offer a few remarks on each of these heads, and the first head that I propose to take for consideration is the jurisdiction of the Federal Court.

It is an accepted proposition that one of the functions of the Federal Court is to interpret the Federal Constitution. The distinguishing feature of a federal government, as contrasted wit

the work of the two Committees that we are discussing now. That is a very big question, and he and I will be the first to admit it is a very controversial question; but I do suggest to him that it does not really come up upon the proposals of these two Committees that we are discussing this morning. I would therefore ask him not to press it at this stage. No doubt, a time will come during our discussions in which we must debate it; but I venture to suggest to him that this is not the stage, and that that proposal really has nothing whatever to do with these two Committees. I would therefore venture to reinforce what Lord Peel has just said—to express the hope that, now that we have reduced our points of difference to such a minimum, we should agree with the suggestions that he has made and accept the recommendations of the Finance sub-Committee upon that basis.

Mr. Jinnah: I just want to say one word. I want to understand one point. After the Committees have made their Reports, I understand that some proposals will be formulated by His Majesty's Government. I understood Lord Peel to use the expression "decisions will be taken," and then the interests concerned will be consulted, and the procedure by which they will be consulted will be announced later on. I did not quite see the force of the words "final decisions." If I am to understand this to be the meaning—that, after the Committees have reported, His Majesty's Government will formulate their proposals and consult the parties concerned before any final decision is taken, then I accept it.

Sir Samuel Hoare: I did not understand Lord Peel's use of the word "decisions" to mean anything final. What I did understand him to mean was that it would be the provisional conclusions of the Committee. Quite obviously they would not be final decisions.

Sir Tej Bahadur Sapru: So far as Lord Peel says that the principles set out in the Report must be accepted as a general basis, I have no exception to take. That has been my position all along. Coming, then, to the Expert Committee, I hope Lord Peel will correct me if I have wrongly understood him. I understood Lord Peel at the present moment to suggest that this Committee—call it by whatever name you like; Expert Committee or a Committee of Competent Persons, or anything you like—is going to work out the details in accordance with the recommendations contained in his Report. If that be his meaning, then I have no objection. But if what Lord Peel means is that this Committee should be also at liberty to replace any principles laid down by him in his Report or to vary any principles, then, frankly, I will not agree.

Lord Peel: May I interrupt for one moment? I think I did explain, did I not, that that was the very point I wanted to meet. We were trying to meet Sir Tej Bahadur Sapru's objection, and that was the reason for the close limitation set out in the powers of the Committee. It was all to meet you, Sir Tej.

Sir Tej Bahadur Sapru: Then I take it that what Your Lordship suggests now is that this fact-finding Committee will only find facts in accordance with the principles laid down in the Report?

Lord Peel: Yes.

Sir Tej Bahadur Sapru: Well, if that be so, I have no objection at all; but again I should like, like both Mr. Gandhi and Mr. Jinnah, to be satisfied in regard to the procedure that is to be adopted for coming to final decisions, because I take it, after the point was raised by Mr. Jinnah, that it was not intended to come to any decisions immediately after the Report has been submitted, but to arrive at tentative proposals, and that those tentative proposals will be laid before a Committee or before the whole Conference, or that you will devise some sort of machinery in order to arrive at final decisions. If that be the understanding, then I have no objection at all.

Mr. Gandhi: But it is clearly subject to the principles that Lord Peel himself adumbrated.

Sir Tej Bahadur Sapru: As regards the other Committee suggested by Lord Peel, I have no objection to that.

Chairman: I think the position now is that, thanks to the tact and good sense of the parties, we have arrived at a compromise which is a workable compromise; and we are very much indebted to Lord Peel and those who are associated with him for having brought us this happy result. I quite appreciate Mr. Gandhi's caveat, and that will appear in the record of the proceedings; and I also appreciate Dr. Ambedkar's caveat. That, however, does not prevent us at all from accepting this very helpful compromise. We have made a very long step forward towards our future work. We will report in that sense; and let me express, at any rate, my personal thanks and your personal thanks to Lord Peel and the sub-Committee.

(*The Committee adjourned at 1-5 p.m. and resumed at 2-30 p.m.*)

HEAD 8.

The Federal Court—(continued).

Dr. Ambedkar: Lord Chancellor, It seems to me that [illegible] sidering the establishment of a Federal Court in Ind[illegible] me for a three questions with which we are mainly concern[illegible] al Courts question is the jurisdiction of the Federal Court [illegible] scheme enforcement of the judgments and decisions of [illegible] In and the third, the organisation of the Fe[illegible] uris- to offer a few remarks on each of the[illegible] ing that I propose to take for consider[illegible] Federal Court.

It is an accepted propositi[illegible] Federal Court is to interpre[illegible] tween [illegible] guishing feature of a f[illegible]

unitary system of government, is that there is, in a federal government, a division of functions which constitutes the essence of federation. There are two spheres, one allotted legally to the Federal Government and another allotted to the State or the Provincial Government; and the important thing in a Federation is to see that the one does not interfere in the sphere of the other. In order to see that, there is, of course, the evident necessity of a Federal Judicature which will keep the two governments restricted to the spheres allotted to them. That is one purpose for which a Federal Court is necessary. But it seems to me that there is also a second purpose which a Federal Court of Judicature must perform. The Federal Court of Judicature is also what may be called a Court of international justice. One of the objects which has led many national governments to form a federation is to see that disputes between different governments and different units which, before the formation of the federation, used to be decided by diplomacy, or by war, failing diplomacy, should be decided by judicial decisions of a Federal Court, to which they are all subject. That is the view taken by the Supreme Court of the United States of America itself; and, with your permission, I would just like to read a small paragraph from one of the judgments of the Supreme Court of the United States of America reported in *Louisiana* v. *Texas*, 176 U.S., page 21.

Chairman: What is the date of that?

Dr. Ambedkar: 1900. This is what Mr. Justice Brown said regarding the function of the Supreme Court:—

> "In view of the solicitude which, from time immemorial, States have manifested for the interests of their own citizens; of the fact that wars are frequently waged by States in vindication of individual rights, of which the last War of Independence, the Opium War of 1840 between Great Britain and China, and the war which is now being carried on in South Africa between Great Britain and the Transvaal Republic, are notable examples; of the further fact that treaties are entered into for the protection of individual rights, and that international tribunals are constantly being established for the settlement of rights of private parties—it would seem a strange anomaly if a State of this Union, which is prohibited by the Constitution from levying war upon another State, would not invoke the authority of this Court to raise an embargo which had been established by another State against its citizens and their property. An embargo, though not an act of war, is frequently resorted to as a preliminary to a declaration of war, and may be treated in certain instances as a sufficient *casus belli.*"

He goes on further to point out that there are many cases which may arise under a federation which, in the event of the absence of federation, would be decided by diplomacy or war; and the Federal Judicature, therefore, in order to prevent such a catastrophe, must

make ample provision for a wide jurisdiction of the Federal Court which would enable it to give justice in all such cases. Taking that standpoint, Lord Chancellor, I think that the scheme which was adumbrated in the observations which you were kind enough to address to the Committee the other day, regarding the jurisdiction of the Federal Court, is somewhat inadequate, if you will pardon my saying so.

According to the observations which you made the other day, the judicial power is to extend to matters arising between Units of the Federation, State versus State, Province versus State, and the Commonwealth of India versus a State or a Province. I do not know whether the word "State" is used to refer to an incorporated body or to the State in its position of trustee, guardian or representative of the citizens. But, apart from that, it seems to me that the Federal Judicature must make provision for matters arising between one Unit and a citizen of another Unit. Take this case. Assume, that an Indian State, which becomes a Unit of the Federation, borrows money through the contemplated Loans Board in the open market. Assume, further, that a resident of the Province of Bombay subscribes to that loan; and assume that the State fails to meet its obligation. What is the remedy? Under the scheme, I do not see any provision made for the Federal Judicature to take due cognisance of a matter of this sort. Take another illustration. We have what are called the ceded territories in the possession of the British Government. The States are demanding that these ceded territories shall be returned; or, if they are not returned, certain compensation shall be given to them. Suppose that, in a ceded territory, the British Government has made a grant of land to a certain individual, and suppose that, after the rendition of the territory to the Indian State, the State Ruler also makes a grant of the same land to another individual. You have here a case where there is one subject matter of the same grant made by two different authorities to two different persons. What is the remedy for the adjudication of a dispute of this sort? Is the Federal Court going to take cognisance of it or not? Again, take the case of two persons between whom there is litigation, but who reside in different Units of the Federation. Which is the Court which is going to take cognisance of the case? These are some of the matters which, I find, are not provided for in the observations that you addressed to us the other day.

Comparing the constitution suggested [illegible] for a Federal Court in India with the jurisdiction of the Federal Courts in Australia and in the United States of America, I think the scheme entirely falls short of the [illegible] federal government. In Australia, under Section 75 [illegible] [illegible] [illegible] the Commonwealth [illegible] [illegible]

State, and (5) in which a writ of mandamus or prohibition or injunction is sought against an officer of the Commonwealth. According to Section 76, it can also have jurisdiction with regard to matters (1) arising under the constitution or involving its interpretation, (2) arising under any laws made by the Parliament, (3) of admiralty and maritime jurisdiction, and (4) relating to the same subject matter claimed under the laws of different States. Turning to the Constitution of the United States, Article 3 (2), the judicial power of the United States is said to extend (1) to all cases in law and equity arising under the constitution, the laws of the United States, treaties made or which shall be made under their authority; (2) to all causes affecting ambassadors or other public ministers and consuls; (3) to all cases of admiralty and maritime jurisdiction; (4) to controversies to which the United States shall be a party; (5) to controversies between two or more States; (6) to controversies between a State and a citizen of another State (which of course subsequently has been abrogated by the eleventh amendment of the constitution); (7) to controversies between citizens of different States; (8) to controversies between citizens of the same State claiming lands under grants of different States; and (9) to controversies between a State or the citizens thereof and foreign States' citizens or subjects. My submission therefore is that, if this Federal Court is going to be federal in the real sense of the word—that is to say, if it is going to cover all cases of dispute between Units of the Federation or between citizens of the different Units—then the list must be revised and must be brought into conformity with the federal jurisdiction that has been given in countries like Australia or the United States.

Now, the next point that I wish to submit, Lord Chancellor, is this—that, although India is going to be a federal country, yet India cannot be satisfied with the extent of jurisdiction which the Federal Courts in countries like Australia and the United States have at present. There are certain peculiar circumstances about India which do not obtain in those countries. Consequently, my submission is that the federal jurisdiction of the Federal Court in India must not only be in conformity with the federal jurisdiction of the Federal Courts in Australia and the United States, but it must have federal jurisdiction in matters relating to fundamental rights and the minority safeguards.

Chairman: Will you refer me to the fundamental rights clause in the U. S. A. Constitution?

Dr. Ambedkar: Yes, I will.

Chairman: Just tell me where it is, if you do not mind. I know it so well, but at the moment I cannot put my hand on it.

Dr. Ambedkar: I am sorry, I have not got it.

Chairman: I was thinking of the clause which began about the privileges and immunities of free citizens in the various States—about the people of each Province and State having free ingress and egress, and that sort of thing. However, we will not waste our

time because I cannot put my hand on it at the moment. Section 2 of Article IV is the one I was thinking of.

Dr. Ambedkar: My submission is this—that whatever may be the manner in which we define the fundamental rights, or whatever may be the manner in which we define minority rights, the important problem is to see that they are properly safeguarded. My reasons are these. The Federal Constitution which we are going to have is not going to be, with all the protests that some of us are making, a perfect *Federation. We shall have probably a Federation* between British India, with all the popular and representative institutions, and the Indian States with no popular and representative institutions in them. I am only imagining. Probably the result may be otherwise; and, if so, nobody will be more happy than myself. But we shall have this situation, namely, that of a federation between a democracy and an autocracy; and we shall have, as I say, within British India, a government not of political majorities, but a government in the main of communal majorities. My view, therefore, is that the question of the protection of fundamental rights, and the question of the protection of minority rights, *assume far greater importance in India than it can assume in any* other constitution; and the duty absolutely to guarantee the fundamental rights, whatever they are, and the minority rights, whatever they are, becomes paramount. The best way of doing this seems to me to be to endow the Federal Court with a jurisdiction to hear matters arising out of them. That is my submission. Everywhere, whether a question arises regarding fundamental rights or minority safegnards, whether in British India or in a Native State, the Federal Court must have jurisdiction to hear them.

Chairman: Would you include cases of commercial discrimination?

Dr. Ambedkar: Yes. If we all agree that it should be a fundamental right that there shall be no commercial discrimination, then it should come within the jurisdiction of the Federal Court. So much with regard to the jurisdiction of the Federal Court.

The next point that I wish to touch upon is with regard to the enforcement of the decisions of the Federal Court. The note which you have *been kind enough to circulate, Lord Chancellor, does not* suggest any legal measures for the enforcement of the decisions of the Federal Court. The matter, I understand, is to be left to the different States and to the different Provinces; and you rather give us the admonition that we must not distrust the *bona fides* of the Provinces or the States, and that we must assume that they will faithfully abide by the decisions of the Federal Court and give effect to them. Now, Lord Chancellor, I feel that we ought to follow the maxim which John Stuart Mill laid down, that if all men were good there would be no necessity for making laws; but that we are obliged to make laws because we know that certain people are bad. So I rather take the view that the matter should not be left in this undecided manner and I say this, that I am

strengthened in the attitude that I take up by the experience of the Supreme Court in the United States. If you will pardon me, I propose to draw the attention of the Committee to the history regarding the enforcement of the judgments of the Supreme Court. I should like first of all to draw your attention to the case of *Chisholm* v. *Georgia,* decided in 1793. The Supreme Court, under the federal jurisdiction which it had, granted a decree in favour of Mr. Chisholm for the recovery of a certain debt against the State of Georgia. But, as history shows, the State of Georgia rose in arms against the Supreme Court, and refused to honour the decree on the ground that it was an affront to a sovereign State; and the judgment of the United States Supreme Court remained in abeyance—it was not executed. So much so, that it was this attitude of the State of Georgia which led to the eleventh amendment, which took away the federal jurisdiction given to the Supreme Court of the United States as between a State and a citizen of another State. Another illustration is the case of *Virginia* v. *West Virginia.* After the Civil War there was a partition of the old State of Virginia into two States, Virginia and West Virginia. This occurred in 1861, and, as a part of this agreement, West Virginia agreed to pay a just proportion of the Public Debt incurred by the parent State prior to January 1st, 1861. This obligation was reaffirmed in the eighth article of the West Virginia Constitution. For forty years, Virginia did all in her power to induce, by friendly negotiation, West Virginia to settle the claim. All this proved unavailing, and, in 1906, Virginia took the matter to the Supreme Court of the United States. West Virginia proved most obstructive, and first of all refused to submit to the jurisdiction of the Supreme Court. It took objection from 1906 to 1911 merely to the jurisdiction of the Supreme Court. Then, when the Supreme Court decided that it had jurisdiction, the Supreme Court appointed a Master to go into the accounts and to prepare a report. A report was prepared, and then again West Virginia took some three years in challenging that report. After that she asked for time for her Legislature to consider whether the obligation should be honoured. That dragged matters on until 1913. Then she asked for time to file a supplementary written statement after the report had been made and objections overruled. In 1915, all methods of obstruction having failed, the Court pronounced judgment. For four years, West Virginia refused to look at the judgment, but in 1919 she was persuaded to honour the debt.

Mr. Jinnah: Assuming that difficulty to exist, what do you suggest?

Dr. Ambedkar: My suggestion is this. I must tell you that my feelings on the subject are really rather high; and I do say this, that for a long time to come there will be communalism and there will be provincialism, and I am not at all certain that, in all this turmoil of communalism, the judgments of the Supreme Court or the Federal Court—whichever you like to call it—are not likely to be flouted. As a member speaking for a minority, and as a

member speaking for a minority which at present has no rights and which is claiming rights and which meets with opposition in every centre. I am not at all certain that a Provincial Government, backed by a communal majority in the Council, will readily consent to give effect to judgments and to decrees which may not be palatable to its own interests. That is my position. I take a very serious view of the matter, and I do say that. Therefore, My Lord, I would suggest that we ought to make provision in the constitution that judgments and decisions of the Supreme Court shall have effect given to them, and I suggest that we should follow and adopt the provisions that are entered in the Australian Constitution. First of all, sections 118 and 51, paragraph 25, of the Australian Constitution provide, of course, that faith and credit shall be given to all laws. That of course is nothing. It is found also in the Constitution of the United States. Then, with regard to the execution of decrees, you have in the Australian Constitution, under paragraph 34, power given to the Federal Legislature to legislate about matters which are incidental to other powers which are given to it. Then you have certain specific powers given in the Australian Constitution to the Central Government, for the enforcement of decrees and decisions. There is first of all Section 51, Paragraph 24, whereby provision is made for inter-State service and execution of judgments as between States, the service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the Courts of the States. That is one thing. Then you have Section 78 in the Australian Constitution—

Chairman: "The Parliament may make laws conferring rights to proceed against the Commonwealth or a State in respect of matters within the limits of the judicial power."

Dr. Ambedkar: Yes, that is one; and as Your Lordship knows, by the Judicature Act, 1903, Part 9, the Federal Legislature in Australia has made definite provision as to how judgments and decrees shall be executed against the States. Then you have Section 120 of the Australian Constitution—

> "Every State shall make provision for the detention in its prisons of persons accused or convicted of offences against the laws of the Commonwealth, and for the punishment of persons convicted of such offences, and the Parliament of the Commonwealth may make laws to give effect to this provision."

I therefore submit that some specific power ought to be conferred upon the Federal Legislature whereby it can enforce the decisions of the Federal Court.

Chairman: What sort of sanction are you thinking of?

Dr. Ambedkar: I do not know what they would do; but my submission is that the matter should not be left hanging in the air in this fashion. I was going to show Your Lordship, from

certain extracts I have made, that judgments of the Supreme Court of the United States have been absolutely worthless by reason of the fact that they were obsessed by the fact that their judgments may not be executed but may be flouted. In one case, for instance, in the case of a Governor of Ohio State, they did make an order that a certain fugitive offender who had gone into the State of Ohio should be delivered by the Governor. The Governor refused to do so. Then the State of Kentucky asked for a writ of mandamus. The Court said: The Constitution does not give us power to execute our judgment; therefore we shall not give a writ of mandamus. That was so, although they had given a decision that the Governor was bound to deliver the fugitive. I could cite hundreds of cases in which the Supreme Court of the United States has refused to give relief simply because it was oppressed by the feeling that its judgments might not be enforced. Unless we have some sort of provision of this sort, I cannot see how the situation will be rendered safe.

Chairman: What sort of legislation? Are you suggesting, for instance, that, if judgment was given against Bengal, you should put a bailiff into Bengal in some way?

Dr. Ambedkar: I mean what I find in Section 78, that in the execution of civil decrees the Treasurer or the person who is in charge of the Treasury shall be bound to pay.

Chairman: Supposing he does not, what happens?

Dr. Ambedkar: I suppose they will haul him up for contempt.

Sir Maneckjee Dadabhoy: Where will he be tried?

Dr. Ambedkar: By the Federal Court, wherever it states.

Mr. Iyengar: Who is to execute the warrant of contempt?

Dr. Ambedkar: The Federal Government, by its own officers. I want the Federal Government to have that power. This was one of the implied powers in the United States; and under Section 120 of the Australian Constitution, the Federal Government has the power to detain offenders against the federal law. Supposing a federal law was passed and a certain citizen of a State abrogated it and the Supreme Court passed judgment against him, and the feeling of the State was so great that they would not keep the man in jail, I suppose, under the power given in section 120, the Federal Government would have its own prisons. If the Federal Government is to see that justice is done in all matters, it must have the power to see that judgments are executed. How it will do that is a matter beyond me to say now. All I say is that power should be given in the constitution to the Federal Government to see that judgments and decisions are made effective throughout India. It is not necessary for me to repeat that, if the remedy fails, the right also fails.

Mr. Jayakar: If a state of racial or communal warfare should prevail, no remedy can be devised which may not become futile.

Dr. Ambedkar: It is not for me to answer that. I will take my own case. Suppose, in the Bombay Presidency, we have a Nasik Satyagraha, and suppose we have a fundamental right, which I claim in the first part of this Memorandum which I have submitted, namely, the right to enter the temple. Suppose the magistrate passes an order saying that we are creating a breach of the peace, and that, unless we desist from doing it, we shall be imprisoned. Suppose we go to the Federal Court under the jurisdiction which I say the Federal Court ought to have, and the Federal Court says that the magistrate was wrong. Suppose we come back to the Home Member for the execution of the order. The Home Member, if he is dependent on the majority of the orthodox people, will say "I cannot do it." I want the Central Government to have some power to make its laws effective under such conditions.

Mr. Jinnah: I think there is a great deal of force in what you are saying—that in order to execute a decree or a warrant it must be backed up in the first instance by the Police, and, in the second instance, the final authority is the Military. How would you expect the member of your Federal Government in charge to execute that decree or warrant unless he had resort to the Military?

Dr. Ambedkar: He may have. I am not putting any limitation upon him. I would give him the power that he thinks will be necessary for the purpose. It may come to that. I do not deny it; but what I say is this, that if you want to make sure of the protection of the people under the fundamental rights or under the minority rights, whatever they are, then I say the power must be vested, and for all purposes I say that the power must be vested in the Federal Government, to see that the decisions of the Federal Court are executed.

Mr. Jinnah: It is not only that the power should be invested, but there must be an instrument in their hands to enforce that power.

Dr. Ambedkar: Under this they will have the instrument.

Mr. Jinnah: Power may be vested in the Federal Government, but that power can only be enforced if you have the instrument to enforce it.

Dr. Ambedkar: The Army.

Mr. Jinnah: Quite right; and therefore what the Lord Chancellor has suggested is—and I think you have omitted to take notice of that—that, in the last resort, it will be the Crown who will be responsible for the enforcement of decrees and orders of the Federal Court. And it is stated there that the Crown will be responsible, because I understand up to the present moment that the position is this, that Defence is going to be a Crown subject. Am I right, Lord Chancellor?

Chairman: Yes. That is the point.

Dr. Ambedkar: But the point I am making is this, that if you are dividing functions between the Federal Government on the one

hand and the Provincial Government on the other hand, then if you do not give the Federal Government the power, legislative or otherwise, to give effect to the decisions of the Supreme Court, it would not be able to do it. That is my submission.

Mr. Jayakar: But, at the same time, the difficulty will not end there. I mean, in the state of communal feeling which you are imagining, the difficulty will not end there.

Dr. Ambedkar: I quite agree that far more drastic measures will probably have to be adopted, and, as we know, in the Swiss Confederation even the military is used—at least, the power is given to the Swiss Federal Government to use the military for enforcing the judgment of the Federal Court in Switzerland. I do not wish to prescribe what means should be adopted, but what I say is this. The difficulty which arose in the United States, that the Federal Government had no power.

Chairman: I quite follow. Therefore, they would not take responsibility.

Dr. Ambedkar: Yes. That ought not to be the situation in India.

Lord Lothian: Is not there this distinction in America—that the Federal authority is able to proceed as long as it is against an individual; but this very question came up in the Convention, and they decided that the Federal Government could not proceed against a State, because one State can only proceed against another by an act of war, and they, therefore, did leave it to the good sense of the community to bring pressure on the State to fulfil the obligations. You can provide up to a certain point in dealing with the individual, but you cannot provide within a Federation for the proceeding of the Federal Government against a State Government except by embodying an act of war as part of your constitutional procedure; and that nobody will do. That is your difficulty.

Dr. Ambedkar: Well, I do not know; but, as I say, in the United States also the President has the power to use the military for suppressing rebellion.

Lord Lothian: And that becomes an act of war, and that has happened in the past.

Dr. Ambedkar: That provision is embodied in the United States Constitution.

Mr. Jayakar: But, surely, the choice will lie between civil war and federal loyalty?

Dr. Ambedkar: That I perfectly realise. I am not denying the point that you are making. What I say is this, that we should not have the position that we have in the United States—that although there is a Federal Court there for the purpose of deciding disputes arising out of federal jurisdiction, there is no power in the Federal Government to make those decisions effective. What I mean is that our Federal Government or Federal Legislature should have such a power in the way in which the Australian has it.

Mr. Jinnah: The distinction is this, that in the United States the Federal Government is in charge and control of the military. You assume that your Federal Government which you are proposing should take over the control and responsibility for the military at once.

Dr. Ambedkar: Well, if not now, later on.

Mr. Jinnah: What is to happen in the meantime?

Dr. Ambedkar: As I said, that is another matter. The necessity for the employment of the military may not arise.

Mr. Jayakar: You will have to go to the Crown to ask for military help.

Dr. Ambedkar: Yes.

Mr. Jayakar: The Crown is the ultimate military authority.

Dr. Ambedkar: I do not think that takes away the point that I am making. The power ought to be given to the Federal Legislature. In the United States of America, people have been hanged by the States, although a writ of error has been issued by the Supreme Court.

Chairman: I have heard it said, with regard to English Common Law, that it is no use pulling up a plant repeatedly to have a look at the roots and to see whether it is growing. English Common Law will not stand that sort of thing, and you will find that no code of law will. You are putting very interesting legal conundrums; but the short answer is that anybody can make a thing unworkable, and it is no good always diving into the foundations to see if the foundations are all right. You must trust a good deal to the good sense of the people. It took about nineteen years in the Virginia case for people to come to a proper view. You may find that that may happen in your case. There may be these difficulties at first; but when you begin to work together, you will find a great many of them disappear. You cannot dig down to the foundations of your house every three weeks to see whether they are in order. You must trust people a little.

Dr. Ambedkar: My only reply is that we must see we do not lay our foundations on sand.

Coming to the third part of the subject, namely, the organisation of the Federal Court, I do not really want to say much on this because I agree with a great deal that has already been said. I should like, however, to make one observation, namely, that we should follow in this matter the Australian model, in so far as by that we should not only be able to get a Federal Court of Appeal for federal matters, but also a Supreme Court of Appeal for India as a whole, as they have done in Australia, whereby the Federal Court not only hears appeals from Courts which exercise federal jurisdiction, but also hears appeals from Courts in matters which are outside the federal jurisdiction.

I would particularly point out that the Federal Legislature of India should be left free to invest the Courts in Indian States with federal jurisdiction, so that it may be able to utilise the agency of the State Courts in the Indian States. Federal jurisdiction should not be delegated merely to the High Courts of the Provinces, but certain selected State Courts, which to the knowledge of the Federal Legislature are functioning efficiently, may also be selected as agencies for the exercise of federal jurisdiction in certain matters. The result of that, I think, will be very important. It will first of all raise the dignity of the State Courts; and, secondly, it will link up the State Courts with the whole judicial system in India, and will make our Federation a real Federation.

Mr. Jayakar: An appeal must like to the Supreme Court, the Federal Court?

Dr. Ambedkar: I am coming to that. In that connection, what I would suggest is that the State Courts should consent to send their appeals to the Federal Supreme Court even in matters not affecting federal jurisdiction. If they do not, I suggest that we should keep the same open-door policy which has been adopted in the Australian Constitution. In the Australian Constitution, provision is made that the Federal Court or the High Court of Australia shall not be prevented from hearing appeals from the States' Courts. I would like to have that provision introduced into our constitution. Further, although we may not make it obligatory upon the States' Courts to send their appeals to the Federal Court, we should prevent the Federal High Court from hearing appeals in case the States subsequently decide to give appellate jurisdiction to the Federal Court from their decisions. As I say, I would again follow the model of the Australian Constitution by giving to the States the right to regulate the right of appeal from their Courts to the Federal Courts. They may not give the same rights of appeal as there may be from British Provinces; they may regulate it if they like.

Then, there is just one thing I would like to say. That is with regard to the relation of the High Court to the Federal Government. At present the Indian High Courts are Provincial both for finance and for administration, except the High Court of Calcutta, which is, of course, Provincial for finance but Central for administration. Sir Tej Bahadur Sapru yesterday made the suggestion that the Indian High Courts should be Central for administration in all Provinces, and for financial purposes should be Provincial. As regards the suggestion by Sir Tej Bahadur Sapru that they should be Central for administration, I entirely agree with him; but my reasons are somewhat different, and I should like to state them. He said there was a certain amount of nervousness on the part of Judges of the Indian Provinces that they are likely to be subjected to local political pressure, and that they would, therefore, like to be lifted from the local politics to the control of the Federal Central Government. Now, I do not think the High Courts in any country,

and criminal disputes among their subjects. The result would be that we would considerably improve the judicial administration in the Native States, which are going to be a part of the future Government of India, without in any sense impairing the efficiency of the Provincial High Courts. On that ground, I suggest that the Provincial High Courts may, for the purposes of administration and also for purposes of finance, be made a Central subject. One of the reasons why the High Court of Calcutta is Ce[illegible] administration is because it is not a Court exclusively [illegible] Presidency of Bengal. It is a Court which is a joint Court for the Presidency of Bengal and for the Province of Assam. It was for this reason that the Simon Commission recommended that the system should continue and be extended to other Provinces. That is the reason why I think this suggestion ought to be welcome.

That is all I have to say on this subject of the Federal Court.

Sir Provash Chunder Mitter: The question has been so fully debated that I propose to confine my remarks to fifteen or twenty minutes, and to deal with those questions which either have not been touched upon or which I do not agree. I will go at once to the question of the functions of that Federal Court. It has already been said that all constitutional questions—for example, the question of interpretation between conflicting statutes passed by different Legislatures, or whether a Bill is *ultra vires*, and so on—should be subject-matters mainly for the Federal Court. It has also been said that all justiciable questions affecting fundamental rights should be such a subject-matter. In this connection, I would suggest that a list of topics might be drawn up, divided into justiciable and non-justiciable; and I think a model for this is to be found in many existing federal constitutions. If we start by having such a list, I think we shall be doing the proper thing. I will not go into details now. Then there is the question relating to safeguards in the constitution for minorities. That I consider to be very important, and I desire to lay stress on that. I am sure it will allay the apprehension of the minorities if a separate list is prepared with regard to their safeguards. Then I desire to suggest, provided the States agree, that questions of interpretation of agreements between the States should be a subject-matter; but this I would make only an enabling clause. I desire to suggest that, with regard to certain matters, powers may be given in the form of an enabling clause, quite apart from powers of a different character. One of these enabling powers may well be this. Supposing there is a dispute between two States, or between a State and a Province, if the State and the Province agree, it may well be referred to the Federal Court instead of appointing a commission, or dealing with the matter *ad hoc*. That is the suggestion I desire to throw out. Another suggestion, which may well be covered by an enabling clause, and is a suggestion which has wide implications, is this. In cases where there is a dispute between the two Units of the Federation, these disputes, if the Units so desire, may be settled by a decision of the Federal Court in cases where, if these were

disputes between individual citizens, the ordinary Municipal Courts would have decided them. Some of the previous speakers have referred to boundary disputes. I would not make boundary disputes a compulsory matter for decision, but I suggest that, where there is a boundary dispute, then, instead of a commission *ad hoc*, whether the dispute is between a British Indian Province and an Indian State, or between two Indian States it might, if they so desire, be referred to the Federal Court for decision. My suggestion, therefore, is that some powers may be obligatory and other powers may be merely of an enabling character, the latter to be utilised if the parties agree to a reference.

Then, with regard to functions, it is stated that there should be both appellate and original functions, and I agree The appellate functions, I suggest, should also be exercised when a constitutional issue arises in any ordinary Court in ordinary litigation. Where, in private litigation, a question arises which has a constitutional aspect, then one of two things may be done. The Judge trying the case, if he thinks the question is of sufficient importance, may make a reference, just as in our Civil Procedure Code there are powers of reference by inferior Courts to superior Courts. In many cases, on the other hand, it will be undesirable to hold up the decision of the case; and in such cases, the ordinary civil Court will go on and give its decision; but it will be open for the parties affected to go to the Federal Court. Another suggestion, which could also be dealt with by means of an enabling clause, concerns the advisory functions to which some of the previous speakers have referred—advisory functions on the lines of section 4 of the Privy Council Act of 1833. Some previous speakers have referred to the fact that the Governor-General now exercises rights of paramountcy, *i.e.*, interpretation of Treaties, and so on, on the advice of the Political Department, and therefore an advisory function may be given to the Supreme Court; but my esteemed friend, Sir Mirza Ismail, has more or less objected to it, if I understood him aright. There could be no objection, however, to an enabling provision. Some States may object to the advisory function and others may not; and after a certain number of advisory opinions have been given, perhaps States will be more ready to take advantage of this provision. I do not, however, want to force anything on the Indian States; but I see no harm in having an enabling provision of this nature.

The point has been raised as to the time at which the jurisdiction of the Federal Court should come into operation in the case of Bills or Statutes. Here, I am sorry to say, I absolutely disagree with my esteemed friend, Sir Muhammad Shafi. When a Bill is before the Legislative Council, it might, according to his suggestion, be open to persons or a community affected to hold up the passage of that Bill, and in that case a number of individuals could often hold up Bills in which really no communal or minority question is involved. At the same time, I entirely agree with his point of substance, namely, that if there is a real question which affects a

welcome it. Unless it is very necessary, however, why should we give the go-by to another of the essentials of federation? As Your Lordship said the other day, very soon, whether of Federation even the "F" will be left is doubtful. That is an aspect of the question which must be taken into consideration.

As regards location, I am sorry to say I do not agree with Sir Muhammad Shafi that Delhi is the most suitable place. I would favour a more central place and a place with other advantages, like Allahabad or Lucknow.

Sir Tej Bahadur Sapru: I certainly support that!

Sir Provash Chunder Mitter: I am neither an Allahabad man nor a Lucknow man, but I am looking at the question from the point of view of India as a whole and the amenities of those places. They are fairly central. Good lawyers are available there, and there are libraries and other facilities. Also, it may be possible for lawyers and Judges to work for a much longer period than might be possible at Delhi.

Mr. Zafrullah Khan: Allahabad is much hotter than Delhi.

Sir Provash Chunder Mitter: Bombay, Calcutta or Madras would be ideal from various other points of view, but they are not so central; and, if you want to have a central place and a fairly efficient one, I think you should choose Allahabad or Lucknow, though if you are looking for efficiency alone, you should select Bombay, Calcutta or Madras.

H.H. The Nawab of Bhopal: If you want a central place, then I would suggest that Central India is the proper place!

Sir Provash Chunder Mitter: There is no High Court in Central India, I think, of the type of some of our Provincial High Courts, with perhaps thirty lawyers possessing big libraries. I do not think you have that in Bhopal, though I do not know that State well.

(The Committee adjourned at 4-10 p.m.)

PROCEEDINGS OF THE FORTIETH MEETING OF THE FEDERAL STRUCTURE COMMITTEE, HELD ON THE 23RD OCTOBER, 1931, AT 11-0 A.M.

HEAD 8.

The Federal Court—(continued).

Sir Provash Chunder Mitter: Yesterday we were dealing with the question of the Federal Court's taking up civil appeals. I gave a figure of 700 appeals as a possible estimate. I did not give any materials on which I based my estimate, because I was anxious to finish before the Committee rose in the afternoon. As it is a question of importance, and as my estimate differs from other estimates made by eminent lawyers, I think I will just say one or two

Council. Of course, all this is nothing more than an estimate. Coupled with that we must take into consideration the fact that, when the appellate Court is located in India, the expenses will be very much less. Taking all these things into consideration, I think my Province will contribute about 200.

Sir Sultan Ahmed: What is your estimate of the number of appeals to the Privy Council from your Court?

Sir Provash Chunder Mitter: I do not think it will be more than 20 or 25.

Sir Sultan Ahmed: From 20 you raise it to 200.

Sir Provash Chunder Mitter: I have given my reasons. I do not think that anyone can assert that it will be 700 or more, nor can anyone assert that it will be 250 or less.

Sir Tej Bahadur Sapru: Will your Lordship allow me just to make a short statement, so that Sir Provash may consider that matter? That matter has not been brought to Your Lordship's notice. In the year 1924, the Government of India appointed a Committee, which is generally known as the Civilian Justice Committee. Sir George Rankin, the Chief Justice of the Calcutta High Court, was the Chairman of that Committee, and I happened to serve on that Committee also. One of the recommendations of that Committee was that the Provincial Governments should appoint Division Benches of Subordinate Judges or District Judges in the districts. These Division Benches were supposed to hear important appeals from Courts of original jurisdiction in the districts. Well, if this system could be accepted, there would naturally be a reduction of appeals to the High Court. All of us were agreed that that was the soundest thing to do—I mean, the members of the Committee were of that opinion. Unfortunately, that scheme has been held up in the Various Provincial Governments on account of financial difficulties, so I anticipate that the Legislature of the future will have to deal effectively with this question of appeals—either to give effect to the recommendations of the Rankin Committee or to take some similar steps; and therefore I do not anticipate that, if you have a Supreme Court in India hearing appeals from the Provincial High Courts, the number will be anything more than 200 to 250. With proper revision of our law in regard to appeals, I think we can keep it within reasonable limits.

Sir Sultan Ahmed: Undoubtedly.

Sir Tej Bahadur Sapru: Sir Sultan Ahmed had something to do with that Committee, and I think he will bear me out that that was the position.

Sir Sultan Ahmed: That is so, My Lord.

Chairman: Would you mind telling me this? I do not want to say too much, because we have very much the same sort of thing going on in England; but I want to get a concrete case, because I find it is so difficult to argue about ge[illegible]ties. Supposing, for example, we will say, a man goes to [illegible] bay—" A " goes.

to law with "B," and wants £500; and supposing he gets judgment against "B" for £500, how many chances of appeal has "B" got?

Sir Tej Bahadur Sapru: If he goes to law on a claim of £500, he must file his suit on the original side of the Bombay High Court.

Chairman: That is the first hearing?

Sir Tej Bahadur Sapru: Yes. His suit is tried by a single Judge. Then there is an appeal to a Division Bench, which generally consists of two Judges. That is the second hearing. In Calcutta, too, they have brought it down to two. That is the second hearing. Then he may have a chance of appeal to the Privy Council if there are differing judgments or if there are concurrent judgments when the case involves a substantial question of law; and that phrase has been repeatedly explained by the Privy Council in various decisions. Then he may have a chance of appeal to the Privy Council.

Mr. Zafrullah Khan: Not where the original sum sued for is £500, that is, below Rs. 10,000.

Sir Tej Bahadur Sapru: Well, if it is above Rs. 10,000.

Chairman: £750?

Sir Tej Bahadur Sapru: Yes. *Now, that illustration is not* quite sufficient, if Your Lordship will pardon me. Supposing the case is filed in one of the districts, and let us assume that the case is of the pecuniary value of Rs. 10,000 or above. Now, a case like that would ordinarily be tried by a Subordinate Judge who exercises original jurisdiction. That is number 1 trial. Then an appeal lies to the High Court; and an appeal of that sort will always be heard, under the Rules of the Court, by a Division Bench consisting of two Judges. That is number 2. Then an appeal can lie to the Privy Council, subject to the provisions laid down in the Code of Civil Procedure. If there are differing judgments, then an appeal lies as a matter of course; and if there are no concurrent judgments, but it is over Rs. 10,000 and a substantial point of law is involved, then an appeal lies to the Privy Council. So ordinarily, there is only one appeal; but there are two appeals in suits of a value up to Rs. 5,000.

Chairman: I am much obliged. Would you kindly help me with regard to this, so that we get it clear? Let us assume one of these latter cases, where it is a question under the new system of some federal law being at stake. There will be the first hearing. What is the first appeal?

Sir Tej Bahadur Sapru: Let us assume that an issue involving a federal question is tried in the Supreme Court. It will go before a single Judge of the Supreme Court. You can provide for an appeal from the decision of the single Judge to a Division Bench of the same Court. If the Division Bench affirms the decision of the single Judge, then there need be no appeal to the Privy Council; but if the decision of the first Court is reversed, then possibly (if

Council. Of course, all this is nothing more than an estim
Coupled with that we must take into consideration the fact t
when the appellate Court is located in India, the expenses wil
very much less. Taking all these things into consideration
think my Province will contribute about 200.

Sir Sultan Ahmed: What is your estimate of the number
appeals to the Privy Council from your Court?

Sir Provash Chunder Mitter: I do not think it will be mo
than 20 or 25.

Sir Sultan Ahmed: From 20 you raise it to 200.

Sir Provash Chunder Mitter: I have given my reasons. I d
not think that anyone can assert that it will be 700 or more, no
can anyone assert that it will be 250 or less.

Sir Tej Bahadur Sapru: Will your Lordship allow me just to
make a short statement, so that Sir Provash may consider that
matter? That matter has not been brought to Your Lordship's
notice. In the year 1924, the Government of India appointed a
Committee, which is generally known as the Civilian Justice Committee. Sir George Rankin, the Chief Justice of the Calcutta High
Court, was the Chairman of that Committee, and I happened to
serve on that Committee also. One of the recommendations of that
Committee was that the Provincial Governments should appoint
Division Benches of Subordinate Judges or District Judges in the
districts. These Division Benches were supposed to hear important
appeals from Courts of original jurisdiction in the districts. Well,
if this system could be accepted, there would naturally be a reduction of appeals to the High Court. All of us were agreed that
that was the soundest thing to do—I mean, the members of the
Committee were of that opinion. Unfortunately, that scheme has
been held up in the Various Provincial Governments on account of
financial difficulties, so I anticipate that the Legislature of the
future will have to deal effectively with this question of appeals—
either to give effect to the recommendations of the Rankin Committee or to take some similar steps; and therefore I do not anticipate that, if you have a Supreme Court in India hearing appeals
from the Provincial High Courts, the number will be anything more
than 200 to 250. With proper revision of our law in regard to
appeals, I think we can keep it within reasonable limits.

Sir Sultan Ahmed: Undoubtedly.

Sir Tej Bahadur Sapru: Sir Sultan Ahmed had something to do
with that Committee, and I think he will bear me out that that
was the position.

Sir Sultan Ahmed: That is so, My Lord.

Chairman: Would you mind telling me this? I do not want to
y too much, because we have very much the same sort of thing
ing on in England; but I want to get a concrete case, because I
d it is so difficult to argue about generalities. Supposing, for
ample, we will say, a man goes to law in Bombay—"A" goes.

to law with "B," and wants £500; and supposing he gets judgment *against "B" for £500, how many chances of appeal has "B" got?*

Sir Tej Bahadur Sapru: If he goes to law on a claim of £500, he must file his suit on the original side of the Bombay High Court.

Chairman: That is the first hearing?

Sir Tej Bahadur Sapru: Yes. His suit is tried by a single Judge. Then there is an appeal to a Division Bench, which generally consists of two Judges. That is the second hearing. In Calcutta, too, they have brought it down to two. That is the second hearing. Then he may have a chance of appeal to the Privy Council *if there are differing judgments or if there are concurrent judgments* when the case involves a substantial question of law; and that phrase has been repeatedly explained by the Privy Council in various decisions. Then he may have a chance of appeal to the Privy Council.

Mr. Zafrullah Khan: Not where the original sum sued for is £500, that is, below Rs. 10,000.

Sir Tej Bahadur Sapru. Well, if it is above Rs. 10,000.

Chairman: £750?

Sir Tej Bahadur Sapru: Yes. Now, that illustration is not quite sufficient, if Your Lordship will pardon me Supposing the case is filed in one of the districts, and let us assume that the case is of the pecuniary value of Rs. 10,000 or above Now, a case like that would ordinarily be tried by a Subordinate Judge who exercises original jurisdiction. That is number 1 trial Then an appeal *lies to the High Court; and an appeal of that sort will always be* heard, under the Rules of the Court, by a Division Bench consisting of two Judges. That is number 2. Then an appeal can lie to the Privy Council, subject to the provisions laid down in the Code of Civil Procedure. If there are differing judgments, then an appeal lies as a matter of course; and if there are no concurrent judgments, but it is over Rs. 10,000 and a substantial point of law is involved, then an appeal lies to the Privy Council. So, ordinarily, there is only one appeal; but there are two appeals in suits of a value [illegible] to Rs. 5,000.

Chairman: I am much obliged Would you kindly [illegible] with regard to this, so that we get it clear? Let us [illegible] these latter cases, where it is a question under the new [illegible] some federal law being at stake. There will be the [illegible] What is the first appeal?

Sir Tej Bahadur Sapru. Let us assume that [illegible] a federal question is tried in the Supreme Court. [illegible] a single Judge of the Supreme Court. You [illegible] appeal from the decision of the single Judge [illegible] the same Court. If the Division Bench [illegible] single Judge, then there need be no appeal to [illegible] but if the decision of the first Court [illegible]

the Indian States agree) there may be an appeal to the Privy Council. Speaking for myself, however, I should treat the decision of the Supreme Court in a divisional jurisdiction to be final and conclusive.

Chairman: Otherwise there would be the original hearing and three appeals in a case where there was disagreement between the first and second Court.

Sir Tej Bahadur Sapru: I stand only for two appeals.

Mr. Zafrullah Khan: May I give an illustration which will show the dangers on the other side? We have had a concrete case in the Punjab which will show how many appeals can be taken. Some time ago, the district boards in the Punjab were authorised by the Local Government to levy a certain kind of tax, and they proceeded to levy it by notification. It was contended by some assessees, who instituted a suit for a declaration to that effect, that the Local Government had no power to authorise the district boards to levy that tax, inasmuch as it was a tax of a nature which was not in the Schedule with regard to which such power had been given. I need not detain the Committee over that. Eventually the High Court decided that it was so, and the tax was declared to be illegal. The result was that several persons who had paid this tax already sued to recover it back, and the district board's finances were in a very perilous condition. The Local Legislature then proceeded to pass an Act, which was called the District Boards' Tax Validating Act, saying that the imposition of this tax between certain dates from the first imposition of it to the date at which it had been declared to be invalid by the High Court should nevertheless be considered to have been valid. Then suits were instituted for a declaration that this Act was *ultra vires* of the Local Legislature. This is what I want to draw attention to. The valuation in each of these suits was very low. One man had been assessed at three rupees, which is about 4*s*., and he instituted a suit for a declaration or an injunction against the district board for recovery of this tax. This suit went first to the Court of a Sub-Judge, fourth class. Whichever way it was decided, there was an appeal either to the senior Sub-Judge (as he is called) in that particular district, if he had powers of hearing appeals, or to the District Judge. That was the first appeal. Whatever the decision of the District Judge, as this involved a question of law, there was a second appeal, to the High Court, which according to its Rules and according to the sum involved, would ordinarily be heard by a single Judge; and, whatever his decision, there would then be an appeal to two Judges of the High Court under the Letters Patent. That would be the third appeal. As a matter of fact, at this stage we were able to avoid this. I appeared on behalf of the Government in all these cases in which appeals were filed, and I made the request at the initial stage that all these matters should be heard together and an order passed that, instead of their being heard by one Judge, they should be heard by two. They were accordingly heard by two Judges, who declared that the Statute was within the

...ers of the Local Legislature. It was open to those people who ...ested the validity of this Statute to go further, and to say that, ...er section 110 (c) of the Civil Procedure Code, this was a case which there could be an appeal to the Privy Council. It might ...erefore go to the Privy Council, so that, in all, there could have ...en four appeals; and, with the first trial, that means the case ...uld be dealt with by five Courts. When questions of Federal ...w are raised, that position had better be kept in mind.

Sir Sultan Ahmed : I can add that a case like that actually came to the Privy Council on one occasion, and the decision of the High Court of Patna was reversed by the Privy Council. The High Court of Patna consisted of five Judges to hear that particular appeal, and the value involved was about £5. Such cases, of course, are exceptional; they are very rare

Mr. Zafrullah Khan : Federal cases will always be like that.

Sir Sultan Ahmed : That point covered a large number of cases, and a very important question of principle was involved. That is why five Judges had to sit in the High Court, and there was a difference of opinion among them, three being on one side and two on the other. I brought the case to the Privy Council and succeeded; but those cases are very rare.

Sir Tej Bahadur Sapru. They are very rare; they need not detain us.

Sir Provash Chunder Mitter : These cases are very rare; and neither as a lawyer nor as a citizen would I exclude jurisdiction in these cases. I remember a case where the claim involved was only a sum of Rs. 2 or Rs. 4. The sum was very small but it was a case where the landlord wanted to exact an illegal cess, and the ryots objected and the law was laid down. The cases to which Mr. Zafrullah Khan referred affected every assessee. Those cases are only one in a hundred, or perhaps even one in five hundred.

Sir Tej Bahadur Sapru : It is more like one in a thousand.

Sir Provash Chunder Mitter : Therefore, so far as our immediate point is concerned, those cases where valuable rights of a large number of people are involved, although the pecuniary value is small, may be kept apart. I am obliged to Sir Tej Bahadur Sapru for his intervention; and that strengthens my position.

Mr. Jinnah : But cases of the character described by Mr. Zafrullah Khan and others have arisen in England and have been taken to the House of Lords.

Sir Tej Bahadur Sapru : Yes, and much more in this countr... than in India.

Sir Provash Chunder Mitter : Undoubtedly, and therefore I think it would be very unwise not to give the right of appeal in those cases, especially as the number is very small.

To go back to my estimate, Sir Tej Bahadur Sapru has referred to the recommendations of the Civil Justice Committee; and he further mentioned that, if those recommendations were accepted, the number of appeals to the High Court would be reduced, and therefore the number of appeals to the Judicial Committee or to the future Supreme Court would be reduced. I have no quarrel with that proposition, but I was dealing with the present system. So far as the system referred to by my friend, Sir Tej Bahadur Sapru, is concerned, I would only say that, even if you had a Division Bench of two Subordinate Judges, if the value be more than Rs. 10,000, there should be an appeal; and, on the other hand, perhaps the number of appeals would increase. At present, if a litigant wants to file an appeal, he has to go to Calcutta or Patna or some other place which may be at some distance from his home; but if the appeal can be heard in his own district town, the number may increase. We need not speculate on this, however. My real point is that, before we take up the question of civil appeals before the future Federal Court or Supreme Court, we should go carefully into the matter. If we can possibly get more accurate figures, let us get them by all means, because on the number of appeals much will depend. We have, however, gone on for many years with the present Judicial Committee, and is there really any tremendous urgency for starting this new experiment right at the threshold of another new experiment? As I have already said, my sympathies are all in favour of civil appeals being tried by tribunals in India by the best possible Judges; but what I am pleading for is this. Let us not start with civil appellate jurisdiction from the very beginning; let us wait for five years, ten years or fifteen years and see how the experiment functions. At the same time, I am free to confess that, although we have first-rate material in India, the materials in England—the class of Judges that are available to the Judicial Committee—are of a much superior character. That is an aspect which you must not lose sight of. But in spite of that, I am on general principles in favour of civil appeals being entrusted to tribunals in India. But I would strongly urge, for the very success of the experiment, that this should not be so from the very beginning.

Now, My Lord, I mentioned the point about the location of the Court; and there again, as I was anxious to finish before the Committee rose yesterday afternoon, I did not mention one or two points which I should like to mention. I have strong objections to Delhi; and, apart from the point I have mentioned, I have a reason. Delhi, at the present moment, has merely a District Court. Supposing you have a Court limited to federal questions, then, without any disrespect to Delhi lawyers, I think lawyers in places where there are High Courts are better suited, for example, Allahabad, Bombay, Madras, Patna—wherever there are High Courts.

Dr. Shafa'at Ahmad Khan : Not Lahore?

Sir Provash Chunder Mitter : Yes, Lahore. In places where there are High Courts, you are likely to have a better type of

lawyer. Now, if you have a Supreme Court dealing with both federal questions and ordinary civil litigation, you may expect some lawyers to migrate for the practice there

Sir Maneckjee Dadabhoy : Some? I am sure they would all rush there?

Sir Provash Chunder Mitter : Well, Sir Maneckjee, everybody is not as anxious to go in for another vocation as some people are. My Lord, if a lawyer is in great demand, say in Calcutta or Allahabad, is it likely that he will change his place of practice? He is more likely to be taken down there specially and paid very substantial fees. If you have your Supreme Court in a place where there is no existing High Court, the chances are that fourth-rate and fifth-rate lawyers will migrate there We do not want this great experiment to be started under such a handicap. I therefore strongly urge that, whatever the place may be, it ought to be a place where there is an existing High Court. There is also another point. At Delhi you have the location of your Federal Government. I would much rather that your Supreme Court or your Federal Court should be located at a place not in close proximity with the Executive. In these federal cases, the Executive will be deeply interested, supposing there is a question between the Federal Government and a Provincial Government, or between the Federal Government and a State I have given certain reasons. Whether those reasons weigh with all of you is a different matter; but those are my reasons.

Sardar Ujjal Singh : Can you state exactly where the advantage is if the Court is situated at Allahabad or any other Provincial centre? Surely the same principle applies

Sir Provash Chunder Mitter : In Provincial Centres, the State Executive cannot possibly have the same influence as the Executive of the Federal Government would have in Delhi. If there be litigation between, say, Madras and Delhi, Allahabad would be neutral. I admit that, if it is litigation between the United Provinces and the Punjab, or between the United Provinces and the Federal Government, that argument would not apply; but in those cases we have already provided that some other place may be selected by the Chief Justice. In the vast majority of cases, however, it would be better to have some place other than Delhi.

Sir Tej Bahadur Sapru : Allahabad?

Sir Provash Chunder Mitter : Certainly; I have pleaded for Allahabad. It will be more central.

Now, My Lord, I will next take up the question of the High Courts.

Sir Maneckjee Dadabhoy : May I ask you one question? Is the Privy Council influenced by the Cabinet here?

Sir Provash Chunder Mitter : No. From that, I suppose, you desire to draw the conclusion that in India there is no possibility of influence. My answer is an emphatic no. I do not want to go

To go back to my estimate, Sir Tej Bahadur Sapru has referred to the recommendations of the Civil Justice Committee; and he further mentioned that, if those recommendations were accepted, the number of appeals to the High Court would be reduced, and therefore the number of appeals to the Judicial Committee or to the future Supreme Court would be reduced. I have no quarrel with that proposition, but I was dealing with the present system. So far as the system referred to by my friend, Sir Tej Bahadur Sapru, is concerned, I would only say that, even if you had a Division Bench of two Subordinate Judges, if the value be more than Rs. 10,000, there should be an appeal; and, on the other hand, perhaps the number of appeals would increase. At present, if a litigant wants to file an appeal, he has to go to Calcutta or Patna or some other place which may be at some distance from his home; but if the appeal can be heard in his own district town, the number may increase. We need not speculate on this, however. My real point is that, before we take up the question of civil appeals before the future Federal Court or Supreme Court, we should go carefully into the matter. If we can possibly get more accurate figures, let us get them by all means, because on the number of appeals much will depend. We have, however, gone on for many years with the present Judicial Committee, and is there really any tremendous urgency for starting this new experiment right at the threshold of another new experiment? As I have already said, my sympathies are all in favour of civil appeals being tried by tribunals in India by the best possible Judges; but what I am pleading for is this. Let us not start with civil appellate jurisdiction from the very beginning; let us wait for five years, ten years or fifteen years and see how the experiment functions. At the same time, I am free to confess that, although we have first-rate material in India, the materials in England—the class of Judges that are available to the Judicial Committee—are of a much superior character. That is an aspect which you must not lose sight of. But in spite of that, I am on general principles in favour of civil appeals being entrusted to tribunals in India. But I would strongly urge, for the very success of the experiment, that this should not be so from the very beginning.

Now, My Lord, I mentioned the point about the location of the Court; and there again, as I was anxious to finish before the Committee rose yesterday afternoon, I did not mention one or two points which I should like to mention. I have strong objections to Delhi; and, apart from the point I have mentioned, I have a reason. Delhi, at the present moment, has merely a District Court. Supposing you have a Court limited to federal questions, then, without any disrespect to Delhi lawyers, I think lawyers in places where there are High Courts are better suited, for example, Allahabad, Bombay, Madras, Patna—wherever there are High Courts.

Dr. Shafa'at Ahmad Khan : Not Lahore?

Sir Provash Chunder Mitter : Yes, Lahore. In places where there are High Courts, you are likely to have a better type of

lawyer. Now, if you have a Supreme Court dealing with both federal questions and ordinary civil litigation, you may expect some lawyers to migrate for the practice there

Sir Maneckjee Dadabhoy : Some? I am sure they would all rush there?

Sir Provash Chunder Mitter : Well, Sir Maneckjee, everybody is not as anxious to go in for another vocation as some people are. My Lord, if a lawyer is in great demand, say in Calcutta or Allahabad, *is it likely that he will change his place of practice?* He is more likely to be taken down there specially and paid very substantial fees. If you have your Supreme Court in a place where there is no existing High Court, the chances are that fourth-rate and fifth-rate lawyers will migrate there. We do not want this great experiment to be started under such a handicap. I therefore strongly urge that, whatever the place may be, it ought to be a place where there is an existing High Court There is also another point. At Delhi you have the location of your Federal Government. I would much rather that your Supreme Court or your Federal Court should be located at a place not in close proximity with the Executive. In these federal cases, the Executive will be deeply interested, supposing there is a question between the Federal Government and a Provincial Government, or between the Federal Government and a State. I have given certain reasons. Whether those reasons weigh with all of you is a different matter; but those are my reasons.

Sardar Ujjal Singh : Can you state exactly where the advantage is if the Court is situated at Allahabad or any other Provincial centre? Surely the same principle applies

Sir Provash Chunder Mitter : In Provincial Centres, the State Executive cannot possibly have the same influence as the Executive of the Federal Government would have in Delhi. If there be litigation between, say, Madras and Delhi, Allahabad would be neutral. I admit that, if it is litigation between the United Provinces and the Punjab, or between the United Provinces and the Federal Government, that argument would not apply; but in those cases we have already provided that some other place may be *selected by the Chief Justice. In the vast majority of cases,* however, it would be better to have some place other than Delhi.

Sir Tej Bahadur Sapru : Allahabad?

Sir Provash Chunder Mitter : Certainly; I have pl[illegible] Allahabad. It will be more central.

Now, My Lord, I will next take up the question [illegible] Courts.

Sir Maneckjee Dadabhoy : May I ask you [illegible] the Privy Council influenced by the Cabinet here?

Sir Provash Chunder Mitter : No. From that [illegible] desire to draw the conclusion that in India there [illegible] of influence. My answer is an emphatic no. [illegible]

into those matters. As a member of the Executive, and as one who has had thirty-seven years' experience of Law Courts, I do say that, although fortunately those cases are very rare. I would certainly take into consideration that, as matters stand in India at the present moment, there are occasional indications of that sort of thing. I will not go further than that.

Mr. Zafrullah Khan : It is a terrible confession and a terrible indictment.

Sir Provash Chunder Mitter : It is, and I say that with a full sense of responsibility, although some of you are perhaps misunderstanding my remarks.

Now, My Lord, I was going to deal with the question of the High Court. I agree with Sir Tej Bahadur Sapru that direct relations with the Federal Government are desirable; but I strongly condemn the Bengal system, where the Provincial Government has to find the funds and the Central Government administers. Therefore, although on general principles the High Courts should be under the administration of the Federal Government, we have to devise some means by which the financial question can be settled satisfactorily. Well, the financial question can be settled, perhaps, in one of two ways—either by allocating some portion of the Court fees or by a contract system. Suppose that the Federal Government enters into an arrangement for a period of, say, ten years, they form certain estimates and certain payments are made for a period of ten years—it may be five years or it may be ten years—a system under which certain payments are made on an estimated basis by the different Provincial Governments. The actual expenditure may be slightly less or slightly more. I would plead for a generous payment by the Provincial Governments, so that, if any High Court requires an additional Judge, there may be enough funds in the hands of the Federal Government, or if any High Court wants some ministerial officers or some change in the system of paper books (about which we had a battle royal in the Bengal Legislative Council) the Federal Government should have enough funds in its hands. If it is a contract system, then it does not matter whether Rs. 20,000 or Rs. 50,000 or a lakh is retained as a surplus by the Federal Government in a particular year, or in another year it is a deficit of Rs. 10,000 or Rs. 20,000; but I plead for a contract system in preference to a system of Court fees, and for this reason. If you enter into a system of Court fees, you enter into various complicated details. For example, in the High Courts all Court fees in probate cases and in letters of administration cases are collected from big estates. We had a recent instance where fifty-two lakhs was collected for Court fees when a very rich man died. That sum was collected by the Calcutta High Court. We have constantly cases of five lakhs, ten lakhs, seven lakhs, which are collected as Court fees, for fees of letters of administration or probate duties. Now, if we have a system of Court fees, then we enter into that complication; but apart from that complication there are other complications. The Court fees levied

in the High Court are part of a system. Sometimes the lowest of the Courts makes a profit, and very often the High Court, with its twelve or fifteen or sixteen Judges, is run at a loss. On the other hand, *one knows how much* a High Court costs, with its Judges and officers. Let me assume that it costs in a particular Province fifteen lakhs, and in another Province ten or twenty lakhs I would go into the matter and then have a provision for, say, ten years, in order to avoid too constant revision. Some means might be devised as to how the revision is to take place. Provided that is done, I am in favour of all the High Courts being under the Federal Government. If I may say so, it is an old idea of mine In 1911 I had the privilege of moving a resolution in the Congress, before we were excluded from the Congress, and the Congress accepted this suggestion of mine.

I will next take up the question of the appointment of civilian Judges in the High Courts. I had to consider this matter very carefully when I sat on the Services Committee, and I adhere to the conclusion which I formed then, namely, that although I am all for retaining the Indian Civil Service and also a certain percentage of British members of the Indian Civil Service, I am against retaining I.C.S. Judges in our High Courts. I agree with Sir Tej Bahadur Sapru that, in the past, we had some very good I.C.S. Judges; but they made good in spite of their limitations because of their innate qualities, and also because they had very great experience of the rural areas. But I am sorry to say that the quality of our I.C.S. Judges has been steadily going down. One *reason for this may be* that it is easier to come home; another reason may be that they have more amenities in the *mofussil* than they had in the old days; a third reason may be that men were more of a scholastic trend of mind in the old days than they are *to-day*. Whatever *the reasons* may be, I do not want to mention names, but I do say that the quality of our I.C.S. High Court Judges is going down. Twenty or thirty years ago, some of the I.C.S. High Court Judges we had could not only hold their own *with the best of the lawyer Judges*, but could do even better; but I must say that now—and it is my personal experience in my Province—the quality of I.C.S. Judges is going down.

Sir Muhammad Shafi : I do not know what my learned friend's experience in Bengal is, but in the Punjab *we have had cases* in which members of the I.C.S., who had been serving on the executive side for ten and twelve years, were suddenly transferred to the judicial side; and then, after they had had judicial experience only for two or three years, were raised *to the Bench*.

Sir Provash Chunder Mitter: I do not quite see the point of my friend's interruption.

Mr. Iyengar : He confirms you.

Sir Provash Chunder Mitter: If he confirms me, I have no objection; but there was no necessity for the interruption, and perhaps you will allow me to go on.

on confidence that, when we have come to power, we shall also come to a sense of our responsibility, and all the communal bias will drop out. But should it prove otherwise, then, too, the Congress would run the boldest risks imaginable because, without running those risks, we shall not be able to exercise real responsibility. So long as we have the mental reservation that we have to rest upon some foreign power for our guidance and for conducting our affairs at a critical juncture, so long, in my opinion, there is no responsibility. One feels also embarrassed by the fact that we really are trying to discuss this thing without knowing where we shall be. I should give one opinion if Defence was not under the control of the responsible Government, and another opinion if Defence was under our own control. I proceed upon the assumption that, if we are to enjoy responsibility in the real sense of the term, Defence will be under our control—under national control in every sense of the term.

I entirely sympathise with Dr. Ambedkar in the difficulty that he raised. It is all very well to have a judgment of the highest tribunal; but if the writ of that tribunal does not run beyond the confines of its own Court, that tribunal will be a laughing-stock of the nation and of the whole world. What is then to be done in connection with that writ? What Mr. Jinnah said, of course, came home—that the military would be there; but it will be the Crown that will run the writ. Then I would say, let the High Court also, or the Federal Court, be under the Crown. In my opinion, the Supreme Court has to be, if we are responsible, under the responsible Government; and therefore the process of carrying out the writ has also to be made good by the responsible Government. Personally, I do not share the fears that actuate Dr. Ambedkar; but I think that his objection is a very reasonable objection, and that a Court which gives judgments should also have perfect confidence that its judgments will be respected by those who are affected by its judgments. Hence I would suggest that the Judges should have the power of framing rules in order to regulate matters in connection with those judgments. Naturally the enforcement will not rest with the Court—the enforcement will rest with the executive authority; but the executive authority would have to conform to the rules that might be framed by the Court.

Somehow or other we fancy that this Constitution is going to give us every detail in connection with the composition of this Court. I respectfully differ from that view in its entirety. I think that this Constitution will give us the framework of the Federal Court and will define the jurisdiction of the Federal Court, but the rest will be left to the Federal Government to evolve. I cannot possibly understand that the Constitution is also going to tell us how many years the Judges are to serve, or whether they are to resign or retire at the age of 70 or 95 or 90 or 65. I think that these will be matters to be taken up by the Federal Court; and hence I propose a drastic method, for what it may be worth.

that the Constitution will give us, to start with, the Judges, and these Judges will serve for a fixed, definite period, so that the responsible Government might not have to shoulder the burden of a Federal Court or a Supreme Court, whatever we choose to call it, which may not answer the needs of the country

We bring in the Crown at the end of almost every sentence. I must confess that, according to the conception of the Congress, there is no question of the Crown. India desires complete independence; and if India enjoys complete independence, whoever the supreme authority there may be, that supreme authority will be responsible for the appointment of Judges and several other matters which to-day belong to the Crown.

It is a fundamental belief with the Congress that, whatever the course the constitution takes, there should be our own Privy Council in India. The Privy Council's portals, if it is really to give relief to the poor people in matters of the highest importance, should be open to the poorest people in the land, and I think that is impossible if the English Privy Council is to decide our fate in matters of the greatest importance. There, too, I would guide ourselves by implicit trust in the ability of our Judges to pronounce wise and absolutely impartial decisions. I know that, in making great changes, we run always very great risks. The Privy Council here is an ancient institution, and an institution which justly commands very great regard and respect; but, in spite of all the respect that I have for the Privy Council, I cannot bring myself to believe that we will not be able to have a Privy Council of our own which will command universal esteem. Because England can boast of very fine institutions, I do not think that therefore we must be tied down to those institutions. If we are to learn anything whatsoever from England, we should learn to erect those institutions ourselves. Otherwise there is a poor chance for this nation whose representatives we claim to be. Therefore, I would ask us all to have sufficient trust and confidence in ourselves at the present moment. Our beginning may be very small but if we have strong, true and honest hearts to give decisions, it does not matter in the slightest degree that we have not got the legal traditions which the Judges in England claim, and very properly boast of before the whole world.

That being my view, I feel that this Federal Court should be a Court of the widest jurisdiction possible, and not decide cases only that arise from the administration of federal laws. Federal laws of course will be there, but it should have the amplest jurisdiction to try all the cases that may come from the four corners of India. It is, then, a question where the subjects of the Princes will be and where they will come in. Subject to what the Princes may have to say, I would suggest, with the greatest deference and with equal hesitation, that there will be, I hope, at the end of it—if we are going to make something out of this Conference—something which will be common to all India, to all the inhabitants of India, whether they come from the States or whether they come from the

rest of India. If there is something in common between all of us, naturally the Supreme Court will be the guardian of the rights that we may consider to be common to all. What those rights should be, I am totally unable to say. It is entirely for the Princes to say what they can be and what they cannot be. In view of the fact that they represent here not only their own Houses but have taken on themselves the tremendous responsibility of representing their subjects also at this Conference, I would certainly make a humble but fervent appeal to them that they would of their own accord come forth with some scheme whereby their subjects also may feel that, though they are not directly represented at this table, their voices will find adequate expression through these noble Princes themselves.

So far as the salary is concerned, you will laugh, naturally, but the Congress does believe that it is an impossible thing for the Congress, which represents a nation of dwarfs, to vie with the English nation, which represents to-day giants in wealth. India, whose average income is *2d.* per day, can ill afford to pay the high salaries that are commanded here. I feel that it is a thing which we will have to unlearn if we are going to have voluntary rule in India. It is all very well, so long as the British bayonet is there, to squeeze out of these poor people salaries of Rs. 10,000 a month or salaries of Rs. 5,000 a month or salaries of Rs. 20,000 a month. I do not consider, however, that my country has sunk to such an extent that it will not be able to produce sufficient men who will live somewhat in correspondence with the lives of the millions and still serve India nobly, truly and well. I do not believe for one moment that legal talent has to be bought if it is to remain honest. I recall the names of Motilal Nehru, C. R. Das, Manomohan Ghosh, Badruddin, Tyabji and a host of others, who gave their legal talent absolutely free of charge and served their country faithfully and well. The taunt may be flung in my face that they did so because they were able to charge princely fees in their own professional work. I reject that argument, for the simple reason that I have known every one of them with the exception of Manomohan Ghosh. It was not that they had plenty of money and therefore gave freely of their talent when India required it. It had no connection with their ability to have ease and luxury. I have seen them living the life of poor people and in perfect contentment. I can point out to you several lawyers of distinction who, if they had not come to the national cause, would to-day be occupying seats on the High Court Benches in all parts of India. I have therefore absolute confidence that, when we come to conduct our own affairs and so on, we will do so in a patriotic spirit and taking account of the miserable state that the millions of India occupy.

One word more and I have finished. Seeing that the Congress holds the view that this Federal Court or Supreme Court—whichever you call it—will occupy the position of the highest tribunal beyond which no man who is an inhabitant of India can go, its

Mr. Jinnah : I did not express any opinion.

Mr. Gandhi : No, I know you did not express any opinion; but you said: "I assume that Defence is a Crown subject."

Mr. Jinnah : I did not say "I assume." I said that, so far as the report of the Federal Structure Committee has gone, it is assumed that Defence is a Crown subject. I expressed no opinion.

Mr. Gandhi : That is right.

Mr. Zafrullah Khan : Lord Chancellor, I have a very few observations to offer on some of the matters which have been discussed in connecti n with the Federal Court. As regards the jurisdiction of the Federal Court, I venture to suggest that the simplest plan would be the one suggested by Your Lordship in your Note—that it should have original jurisdiction with regard to certain federal matters only that have been described as matters between different Units of the Federation or between one or more Units and the Federation itself. In such matters, I would support the suggestion that there should be an appeal from the decision on the original side to two or more Judges of the Federal Court itself, and from the appellate decision an appeal to the Privy Council only when the Federal Court grants leave for such appeal, or when the Privy Council, on being moved, grants such leave to appeal.

That is one branch of its jurisdiction. The other would be the appellate jurisdiction of the Federal Court, first, in federal matters. These matters would come up in the first instance before Provincial Courts or State Courts, and an appeal would then be carried to the Federal Court. With regard to these, I have one suggestion, and it is this. Ordinarily the question as to which should be the Court of first instance in such matters would depend upon the valuation of the suit: but having regard to the importance of the matters that are likely to fall under this category, and also having regard to the necessity of an expeditious decision on matters of this kind, I would very respectfully submit that the statute or the rules ought to provide that matters of this kind should, in the first instance, be heard by some higher Court than ordinary Courts of first instance in the Provinces or the States. That is to say, supposing, as in the illustration given by me earlier this morning, there is the question of the *ultra vires* or the *intra vires* of a particular statute, and the suit in which this question arises is of a very low valuation, under the ordinary law as it at present exists the suit would be heard in British India by a Sub-Judge of the fourth class, with an appeal to the District Judge, a second appeal to the High Court to be heard by a single Judge, a Letters Patent appeal to two Judges of the High Court, and then, if we had this Federal Court, an appeal to the Federal Court; and, with great respect, I think that that ought to be avoided. That is to say, the suit would have to run through four stages in the Provincial Courts before it could be brought up before the Federal Court. My submission, therefore, is that the statute or the rules ought to provide that a matter of that kind in the very first instance ought to be heard in some Court higher

than the ordinary Courts of first instance in the States or in British India.

Chairman : I am very much obliged to you for that suggestion. It has been thought of here; but would you just tell me your view with regard to this? I quite agree with you that if you could start in a higher Court—say, for the sake of argument, the Court of Appeal and not a Court of first instance—it has great advantages, but there is this trouble. I have no doubt you have thought of it. Supposing, for example, a suit partly depends upon questions of fact and partly depends upon questions of law, it is a little inconvenient to start a suit like that in a Court of Appeal and let the Court of Appeal find the facts. You see, you want a sort of Court of first instance to find the facts. I rather agree with you, but how do you get over that difficulty?

Mr. Zafrullah Khan : I would meet that difficulty by suggesting that suits of this nature should, in the first instance, be heard by Courts, at any rate in British India, consisting of what are known as District Judges, who have even under the present law, original civil jurisdiction. A District Judge at present can hear, and sometimes does hear, suits on the original side, and determines the facts as well as the law on the original side. For instance, in the Dera Ghazi Khan District in the Punjab, all suits above the value of Rs. 5,000 are, in the first instance, heard by the District Judge, from whom an appeal lies direct to the High Court. The next provision I would suggest is that in such matters, appeals should lie direct to the High Court and should be heard by a Division Bench. That would be secured by Rules of the High Court. So that the result would be that a Letters Patent appeal from the decision of one Judge of the High Court to two Judges would be avoidable. The matter would then come up to the Federal Court at the third stage—the trial and appeal to the High Court heard and determined by two Judges and then the Federal Court itself have appellate jurisdiction in ordinary matters also—at least so far as British India is concerned—I have to say only this. I agree emphatically with Sir Muhammad Shafi that the Federal Court should have, whether as Federal Court or in its capacity of Supreme Court, criminal appellate jurisdiction to deal with matters where the High Court, on appeal by the Local Government, has converted an acquittal into a conviction, and where the offence is punishable either by death or by transportation for life. I think that, once a conviction is recorded (it does not matter by which Court), the person convicted ought to have at least one chance of appeal. In such matters—and these matters will be very few—I would give a right of appeal to the Supreme Court.

Chairman : I understand you to say that that is in cases where acquittal has been turned into a conviction?

Mr. Zafrullah Khan : Yes; and where the offence involved is offence punishable by death or by transportation for life.

Sir Muhammad Shafi : That was exactly my position.

Mr. Zafrullah Khan : With regard to other criminal matters, apart from reservations on points of law and certificates of the Advocate-General in the High Courts in the Presidency towns, I would not have any appellate jurisdiction vested in the Federal or the Supreme Court; that is to say, no appeal as of right.

With regard to the Prerogative of the Crown as at present exercised by the Privy Council on the criminal side, I would leave that untouched. I would leave that with the Privy Council and would not wish to have it transferred to the Federal or the Supreme Court, because that, I conceive, is a peculiar Prerogative in which His Majesty, as the fountain head and also as the reserve of justice, as it were, intervenes in very peculiar and very exceptional circumstances to correct certain kinds of errors.

With regard to ordinary civil appellate jurisdiction, my difficulty is this. I agree entirely that it is extremely desirable that such civil appellate jurisdiction as is at present exercised by the Privy Council should be transferred to the Federal Court.

Mr. Jinnah : The Supreme Court?

Mr. Zafrullah Khan : Or the Supreme Court. My difficulty is that, at the very start, you are likely to be faced with the position that there will be a very heavy amount of work on this side. I am prepared to take the figures submitted by Sir Sultan Ahmed as being moderate ones, namely, 300 appeals in the year. I am also prepared to accept the suggestion that ordinarily an appeal of this kind should be heard by a Bench of three Judges in the Supreme Court, and that if you have six Judges they will sit in two divisions all the year round. Taking the number of days on which the Privy Council sits during the year here to discuss appeals, in one year it sits ordinarily on 140 days. Let us suppose the Supreme Court sits for 150 days in India. That means that two divisions will sit on 150 days, which is equivalent to one division sitting on 300 working days.

Chairman : Do you mind telling me what are your hours in India?

Mr. Zafrullah Khan : They differ in different High Courts; but in our High Court they are from 10 to 3-30, with an interval of half-an-hour.

Chairman : About 5 hours.

Mr. Zafrullah Khan : In India, especially in a climate of that kind, you could not expect your lawyers to sit longer than that.

Mr. Jinnah : Especially if they are 70 years old!

Mr. Zafrullah Khan : Particularly if they are over 70 years of age, you cannot expect them to sit longer than they sit in this country. That would give you, as I say, two divisions sitting for 150 days, which is equivalent to one division sitting on 300 working days. It is a very optimistic estimate that, on the average,

one appeal would be heard on one day and determined. I think it will take, on the average, considerably longer than that. Even on the modest estimate which has been made, therefore, six Judges will not by any means be capable of coping with this amount of work. That is a very serious difficulty. There are also a few criminal appeals which I have suggested should come up to the Supreme Court.

Now, of course, there are various ways of dealing with this difficulty. I do not say that this difficulty should not be met. One of the ways is by raising the valuation with regard to civil appeals. After all, there is no particular virtue or charm in the figure of Rs. 10,000, and this figure was fixed at a time when property had far less value than it has at present in India, even after the downward tendency of the last few years That is one remedy, but I am not going to suggest remedies. My suggestion is this. I agree with the extreme desirability of investing the Supreme Court with this jurisdiction, and I agree with Sir Provash Chunder Mitter that the Statute should provide for the possibility of conferring this jurisdiction on the Supreme Court, leaving it subsequently to the Federal Legislature, whenever it chooses, and after it has gone thoroughly into the matter, to vest this jurisdiction in the Supreme Court. I should not, in this constitutional Statute, start with transferring this *jurisdiction to the Federal* Court; but I would leave it within the power of the Federal Legislature to do so whenever they consider they can make proper arrangements for the work to be carried on I would respectfully differ, however, from the suggestion put forward by Sir Muhammad Shafi that, up to a certain valuation, appeals should go to the Supreme Court, but that above that valuation appeals—civil appeals, that is—should go to the Privy Council. I believe that would lead to a certain confusion.

Sir Muhammad Shafi : Lord Chancellor, in order to curtail the discussion, perhaps you will permit me to say that, so far as I am concerned, I am in favour of the transfer of appellate jurisdiction *in toto* to the Supreme Court. It was merely to conciliate gentlemen holding the kind of views that my friend, Sir Provash Chunder Mitter, holds that I suggested that, *during the transitional period*—that is what is being missed by my friends—the limitation of one lakh might apply.

Mr. Zafrullah Khan : Though the suggestion may be made to conciliate Sir Provash Chunder Mitter and those who think like him, and though it may be *intended to* apply only during the transitional period, I am afraid it would lead to complications; and one kind of complication might be this. Let us suppose that the Supreme Court, in an appeal properly brought before it, determines a certain question of law in a certain way. There is no appeal provided to the Privy Council in those matters, and that decision is final. That would be binding on the Courts from which appeals lie to the Supreme Court in such matters. Suppose there

Sir Muhammad Shafi : That was exactly my position.

Mr. Zafrullah Khan : With regard to other criminal matters, apart from reservations on points of law and certificates of the Advocate-General in the High Courts in the Presidency towns, I would not have any appellate jurisdiction vested in the Federal or the Supreme Court; that is to say, no appeal as of right.

With regard to the Prerogative of the Crown as at present exercised by the Privy Council on the criminal side, I would leave that untouched. I would leave that with the Privy Council and would not wish to have it transferred to the Federal or the Supreme Court, because that, I conceive, is a peculiar Prerogative in which His Majesty, as the fountain head and also as the reserve of justice, as it were, intervenes in very peculiar and very exceptional circumstances to correct certain kinds of errors.

With regard to ordinary civil appellate jurisdiction, my difficulty is this. I agree entirely that it is extremely desirable that such civil appellate jurisdiction as is at present exercised by the Privy Council should be transferred to the Federal Court.

Mr. Jinnah : The Supreme Court?

Mr. Zafrullah Khan : Or the Supreme Court. My difficulty is that, at the very start, you are likely to be faced with the position that there will be a very heavy amount of work on this side. I am prepared to take the figures submitted by Sir Sultan Ahmed as being moderate ones, namely, 300 appeals in the year. I am also prepared to accept the suggestion that ordinarily an appeal of this kind should be heard by a Bench of three Judges in the Supreme Court, and that if you have six Judges they will sit in two divisions all the year round. Taking the number of days on which the Privy Council sits during the year here to discuss appeals, in one year it sits ordinarily on 140 days. Let us suppose the Supreme Court sits for 150 days in India. That means that two divisions will sit on 150 days, which is equivalent to one division sitting on 300 working days.

Chairman : Do you mind telling me what are your hours in India?

Mr. Zafrullah Khan : They differ in different High Courts; but in our High Court they are from 10 to 3·30, with an interval of half-an-hour.

Chairman : About 5 hours.

Mr. Zafrullah Khan : In India, especially in a climate of that kind, you could not expect your lawyers to sit longer than that.

Mr. Jinnah : Especially if they are 70 years old!

Mr. Zafrullah Khan : Particularly if they are over 70 years of age, you cannot expect them to sit longer than they sit in this country. That would give you, as I say, two divisions sitting for 150 days, which is equivalent to one division sitting on 300 working days. It is a very optimistic estimate that, on the average,

was a different valuation for Privy Council appeals, and s quently, in a matter with the higher valuation, the same que were brought before the Privy Council, and the Privy Co pronounces upon it in a different way. After those two prece have been established, which is the precedent which the subordi Court should follow?

Sir Tej Bahadur Sapru : The Privy Council. That is exa what happens at the present moment. Where the decision of full Bench of the High Court is one way and the decision of Privy Council is the other way, then the decision of the Pr Council prevails.

Mr. Zafrullah Khan : The Privy Council is a Court of Appe from all High Courts in India with regard to one valuatio Rs. 10,000 or upwards, and so on. Therefore, the Courts are bound to follow the Privy Council. But if the Supreme Court the final Court of Appeal with regard to suits up to the value o one lakh, and there is to be no appeal from its decision in suc matters to the Privy Council, it is, up to one lakh, the final appel late Court whether in England or in India, and the lower Court are bound to follow it.

Sir Tej Bahadur Sapru : So long as there is a Prerogative of the Crown under which an appeal can go to the Privy Council, the Privy Council will be the ultimate Court.

Mr. Zafrullah Khan : The Supreme Court in a case would technically and legally still be correct in deciding the same matter, if it came before it again, in accordance with its original decision. If there are no appeals from the Federal Court to the Privy Council, it is itself the Court of last resort, and is not bound by the Privy Council decision. That is the kind of confusion that is likely to arise. I do not want to labour the point.

With regard to the personnel of the Supreme Court, I want to make only one suggestion. It is this, that in addition to other qualifications that may be laid down for the eligibility of lawyers for appointment as Judges to the Supreme Court, I would suggest an obvious qualification, and I will give the reason for stressing it. It is this, that anybody who has served as a High Court Judge, whether you lay down any period or not, should be eligible for appointment to the Supreme Court. The reason why I stress this obvious qualification is this, that there are several kinds of people who are eligible for appointments to the High Court; and though they may not be directly eligible for appointment to the Supreme Court, if any such person has been appointed to the High Court, he should be eligible to be appointed to the Supreme Court. This would bring in members of the subordinate judiciary and others.

Sir Maneckjee Dadabhoy : I think that is a very sound principle.

Mr. Zafrullah Khan : With regard to the question of salaries, I need say no more than this—that in this, as in other matters, the

was a different valuation for Privy Council appeals, and subsequently, in a matter with the higher valuation, the same question were brought before the Privy Council, and the Privy Council pronounces upon it in a different way. After those two precedents have been established, which is the precedent which the subordinate Court should follow?

Sir Tej Bahadur Sapru : The Privy Council. That is exactly what happens at the present moment. Where the decision of the full Bench of the High Court is one way and the decision of the Privy Council is the other way, then the decision of the Privy Council prevails.

Mr. Zafrullah Khan : The Privy Council is a Court of Appeal from all High Courts in India with regard to one valuation, Rs. 10,000 or upwards, and so on. Therefore, the Courts are all bound to follow the Privy Council. But if the Supreme Court is the final Court of Appeal with regard to sums up to the value of one lakh, and there is to be no appeal from its decision in such matters to the Privy Council, it is, up to one lakh, the final appellate Court whether in England or in India, and the lower Courts are bound to follow it.

Sir Tej Bahadur Sapru : So long as there is a Prerogative of the Crown under which an appeal can go to the Privy Council, the Privy Council will be the ultimate Court.

Mr. Zafrullah Khan : The Supreme Court in a case would technically and legally still be correct in deciding the same matter, if it came before it again, in accordance with its original decision. If there are no appeals from the Federal Court to the Privy Council, it is itself the Court of last resort, and is not bound by the Privy Council decision. That is the kind of confusion that is likely to arise. I do not want to labour the point.

With regard to the personnel of the Supreme Court, I want to make only one suggestion. It is this, that in addition to other qualifications that may be laid down for the eligibility of lawyers for appointment as Judges to the Supreme Court, I would suggest an obvious qualification, and I will give the reason for stressing it. It is this, that anybody who has served as a High Court Judge, whether you lay down any period or not, should be eligible for appointment to the Supreme Court. The reason why I stress this obvious qualification is this, that there are several kinds of people who are eligible for appointments to the High Court; and though they may not be directly eligible for appointment to the Supreme Court, if any such person has been appointed to the High Court, he should be eligible to be appointed to the Supreme Court. This would bring in members of the subordinate judiciary and others.

Sir Maneckjee Dadabhoy : I think that is a very sound principle.

Mr. Zafrullah Khan : With regard to the question of salaries, I need say no more than this—that in this, as in other matters, the

position is bound to be regulated by the laws of supply and demand. Those laws are bound to be followed; and whoever has to fix the salary will have to keep that in mind. I would certainly not raise the age limit *for compulsory retirement* to 70, though I think it would be desirable to raise it in the case of the Supreme Court to 65.

Chairman : I wanted to ask you about that. I am only thinking of difficulties which I personally happen to know about. What number of years qualifies for a pension in India? Is it 12 years?

Mr. Zafrullah Khan : At present it is $11\frac{1}{2}$ years for Judges of the High Court.

Chairman : Perhaps you could help me in this, because in these matters I have had some little experience. Suppose you make the age limit at which Judges are to retire 65, and assume that they cannot get a pension unless they serve 12 years.

Mr. Zafrullah Khan · That, My Lord, is the full pension. The minimum qualifying period for the minimum pension is 8 years.

Sir Tej Bahadur Sapru . 6 years

Mr. Zafrullah Khan · 6 years of full service, which is 8 years.

Sir Tej Bahadur Sapru : There are three kinds of pensions now, I believe. At the end of 6 years and 9 months you get a certain pension. I believe at the end of 9 years you get another pension. At the end of the full term you get a full pension

Chairman : What I am thinking is this, that supposing you have got to serve 12 years for a pension and you have got to retire at 65, you cannot very well appoint a Judge who is aged 60, can you? The position is that the person responsible for appointing Judges would not want to make the State liable to pay a pension after 5 years' service, assuming that he gets a proportionate pension. You *do rather* want to get the full twelve years out of a Judge if you can, do you not? I am thinking now of the other side of it—those of us who have got the responsibility of appointing Judges. All I am saying is this, that if you want a Judge to earn his full pension, and he has got to retire at 65, you have got to appoint him before he is 53. I am not saying it is a wrong thing.

Mr. Zafrullah Khan : Your Lordship is perfectly right, and this is not a matter of principle that has got to be argued about. One has to draw a line somewhere, and my opinion is this, that people would generally be *nervous in* submitting disputes of this kind to the judgment of gentlemen of the age of over 65 in a climate like that of India. Sitting, say, in Delhi in May, a gentleman over 65 years of age would not be perhaps an ideal kind of Judge.

Mr Jinnah : Might not the answer to your question be, that if you had a High Court Judge transferred to the Supreme C[illegible] he has been in the High Court for a certain num[illegible]

Similarly, I agree very strongly with Sir Tej Bahadur Sapru that the provision in the Act for the appointment of additional Judges should disappear altogether. It has done a good deal of harm in many directions. In order to secure the complete independence of the judiciary, the principle ought to be followed that, once a person has been selected for appointment as a High Court Judge, that selection ought to be final in the sense that, so far as his capacity is concerned, it must be assumed that he is fit to be a High Court Judge. The appointment should in no sense be a trial appointment, as very often happens at present. The difficulty can be got over in this way. I know the difficulty is that sometimes there are arrears in the Courts, and it is desirable to reduce those arrears, and thus temporary appointments are made. That difficulty, however, can be overcome by laying down, as is laid down in the Present Act, the maximum number of Judges, but not laying down any minimum number of permanent Judges, such as is laid down in the present Letters Patent. Subject to that maximum, Judges can be appointed to permanent posts. If it appears, after a certain time, that all these Judges are not wanted, then, after the next retirement, no new appointment need be made until it is felt that the number ought to be raised again; and thus an adjustment can take place from time to time without having additional Judges.

Mr. Jinnah : If you are to fix a maximum, you will require to change the Statute.

Mr. Zafrullah Khan : There is a maximum of twenty at present. The Government of India Act lays it down that each Court shall consist of one Chief Justice and not more than twenty Judges.

Mr. Jinnah : Of course, if you fix the maximum at one hundred it is all right.

Mr. Zafrullah Khan: No; the Government of India Act lays down the maximum at present.

Sir Tej Bahadur Sapru : You cannot exceed a certain number at present.

Sir Provash Chunder Mitter: But nobody has yet had twenty. We have made the nearest approach.

Mr. Zafrullah Khan : You should leave the maximum there, so as not to exceed that number; but do not lay down any minimum, so that you must have so many. You can then regulate the number subject to the work available. The statutory maximum is already laid down.

With regard to the suggestion that the High Courts should be centralised on the model of the present Calcutta High Court—a suggestion which has been made by Sir Tej Bahadur Sapru—with all respect to Sir Tej, I differ very strongly from the view put forward by him. Even with regard to the Calcutta High Court,

the arrangement—whatever may have been the historical reasons for it—has not worked in an entirely satisfactory manner; and one very obvious objection to it is this. If the administration of the High Court is to be directly subordinated to the Central Government and the finance is to remain with the Province, then the position is what may be described as a triangular one. Whenever the High Court wants funds, it approaches the Central Government. The Central Government knows that the Central funds will not have to provide the money which is required and the burden will fall on the Province, so that it may say "Very well, the High Court shall have these funds," and it will send a sort of certificate to the Provincial Government, which has to find the money. Let us suppose, however, that the High Court urgently requires an extension of its buildings, and let us suppose that the proposal for the extension of the buildings is a reasonable proposal, and that the Central Government thinks the High Court ought to have the money. Suppose, on the other hand, that the Provincial Government, possibly owing to a certain financial stringency, is not convinced of the reasonableness of the demand of the High Court and things that, for the present, and perhaps for some time to come, having regard to its other commitments, it is not able to provide the funds. That immediately raises a conflict of a type which should as far as possible be avoided. There are many other considerations which make it desirable that the present arrangement, which has certainly not led to any undesirable results whatever, should continue. Sir Tej Bahadur Sapru referred to pressure which it is sometimes sought to exercise on High Courts with regard to administration or the appointment of subordinate officials. He fears that pressure of this kind may be exercised in the local Legislative Council. I am very much afraid that that kind of pressure on the High Courts could easily be brought to bear even in the Central Legislature. It would only be necessary for a Province to ask one of its representatives in either House of the Central Legislature to raise such a point. It would be easy to raise it. Also, to keep the Central Legislature free from this kind of thing, it would be better to continue the present regulations so far as the High Courts are concerned.

That is all I have to say.

Sir Akbar Hydari : My Lord Chancellor, With regard to the different Heads which you have given us, regarding the Federal Court, I may say at once that, so far as question 1 is concerned, I agree that the appointment of the members of the Federal Court should be by the Crown and at its pleasure. As regards question 3, regarding the exclusive original jurisdiction, I also agree that the Federal Court should have exclusive original jurisdiction as set out in questoin No. 3 with regard to interpretation of the constitution, but not, of course, with regard to any matter which involves the interpretation of the Treaties with the Crown. In this jurisdiction, I should wish that there should be the possibility of providing, as of right, an appeal to the Privy Council, by a formula which

does not detract from the sovereignty of the States in any greater degree than the creation of a Federal Court.

Coming now to the question of appellate jurisdiction, I do not desire the creation of a Federal Court to which appeals will go from the High Courts of the federating Units, or at all events from the High Courts of the States without their leave. Nor is it desirable that individuals should, by raising the question of a constitutional point or of a law on a Federal subject being involved, be told to take a matter from the State High Court to such Federal Court. What is desirable is to have a Federal Court which will decide upon disputes coming under the following categories:—(*a*) as between Units or between a Unit and the Federal Government; (*b*) where the question of the interpretation of a federal law is raised in any Province or State Court of law, and the matter as a point of law is referred either by the Federal Government or the Government of a federating Unit, or by the High Court of a federating Unit, for decision by the Federal Court. In this connection, I may say that I am in agreement with the remarks which Sir Tej Bahadur Sapru made in his speech. I am quoting from his speech:—

> "But it is quite conceivable that certain issues raising questions relating to the constitution or the interpretation of federal law may arise in the course of private litigation either in British India or in Indian States."

Then he suggests:—

> "I therefore suggest that, whenever a question of that character arises in the course of private litigation—that is to say litigation to which private persons are parties—or in the course of litigation to which one of the parties is a private person and the other is a State, a case should be stated by that Court for the opinion of the Federal Court; and, when the opinion of the Federal Court has come back to the original Court which was seized of the case, that Court should give its final decision following the view of the Supreme Court or Federal Court."

Then he went on—I have one more quotation from his speech, because it absolutely supports the position and renders it clear in his own exceptionally clear language:—

> "Your Lordship will remember that, a few minutes ago, I referred to the revenue Courts which exist in India, and which exercise a very special jurisdiction in several Provinces. Now, the revenue Courts generally deal with questions of revenue between the State and the landlord, or with questions relating to rent between landlord and tenant. If, in any litigation arising in a revenue Court, a question of title is raised, the law provides that that Court will stay its proceedings to state a case on that particular point to the neighbouring civil Court and get its decision, and finally pass its judgment in accordance with the decision

on that particular point. That happens every day in several of the Provinces with which I am acquainted. What I suggest is some similar procedure in this connection."

Then Sir Sultan Ahmed interposed:—

"*In the case* to which you refer the word used is 'may,' not 'shall.' They may decide the point summarily or they may refer the matter to the civil Court for decision."

Then Sir Tej says:—

". . . . That has been found to be very convenient, and it has led to the avoidance of a great deal of unnecessary litigation and waste of time in India; and I do suggest that, in the interests of uniformity of authority, it is a procedure which, at any rate, might be investigated and examined, and if you find it satisfactory, then you should incorporate it there."

This is my position with regard to the appellate jurisdiction of the Federal Court in matters where any case, arising out of the law, which is federal is concerned—federal in the strictest sense of the term.

I should, My Lord, draw a very clear distinction between what I would call the Federal Court and the Supreme Court of British India. For the latter there are all those questions which were discussed by the eminent lawyers on the other side. They will be seized with regard to appeals in civil and criminal cases from British Indian High Courts on British Indian law, but not questions in which the interpretation of the constitution or cases which arise in Indian States are concerned. I should like really, as far as possible, that the Federal Court and all federal institutions should be kept clear of those different particular matters to which some members on the other side have referred.

As regards the Supreme Court, as thus distinguished, although it is a matter which concerns more or less, according to my conception, British India, perhaps, *My Lord Chancellor*, you might permit me to make one or two observations which are dictated from the experience I have recently had in my own Government when we were discussing how to provide some machinery by which appeals from our High Court could be decided so as to give complete satisfaction to the public. *Our position is, of course,* that there are no appeals to the Privy Council here. We have to provide a local machinery; and I take it that the problem now is the same with regard to India—as to what machinery you could provide for appeals from the High Courts of British India. We have had several considerations in *mind*. One was that we do not want to impair the position of the High Court and its Judges in the public mind as the highest judicial officers of the land. Secondly, we do not want, in creating these Courts of Appeal, to go one step higher with regard to salaries, which have repercussions on the whole scale of salaries in various other departments.

Hitherto it has been felt that the salary of a High Court Judge must be almost the highest. We thought of one or two alternatives. One was to make this final Court of Appeal really a Bench of five Judges of the High Court—of each High Court. Have I made myself clear?

Chairman : Yes. We used to have the same system—what we called the Exchequer Chamber.

Sir Akbar Hydari : Or that there should be a panel on which there were certain Judges of the High Court and certain other Judges, from which the final Court of Appeal should be selected. Now, applying that to the Supreme High Court for India, the suggestion which I want merely to throw out for consideration is that perhaps the Lord Chief Justice, who will have to be appointed in any case for the Supreme Court, might, in consultation with the Chief Justices of the different Provinces, make out a panel and a time-table for disposing of the final appeals of the whole of British India. If you did that, then each Province would be responsible for furnishing its quota of Judges for the Supreme Court for the final appeal.

Chairman : May I ask you one question on that? We had a very long discussion on this very point, which you have been good enough to raise now, at the Imperial Conference here last year, as to the manner in which we should select an Empire Court. One of the suggestions—I do not say it is a suggestion we are going to act on—was that each one of the Dominions should appoint a number of Judges—three or four—who would be Judges to serve on the Imperial Court. If there was a dispute between two of the Dominions, or between the home country and one Dominion, the idea was that Judges should be drawn from that panel who did not belong to either of the units who were contesting the matter. There is just one little difficulty, however, although it could easily be got over. How would you select Judges from the panel? Would it be by lot, or how?

Mr. Jinnah : It would be a lottery!

Sir Akbar Hydari : The Chief Justice of the Province might do it with his committee. I understand they have a sort of committee.

Chairman : The suggestion you make is a very interesting one, and I quite appreciate the value of it. But are you confining the suggestion merely to British India, or are you saying that not only each Province but each State should supply its quota?

Sir Akbar Hydari : So far as this Supreme Court is concerned, as it would deal only with British-Indian appeals, it should be only British India.

With regard to the Federal Court in the strict sense of the term—the Court which is going to have the exclusive original jurisdiction to which I have referred—it appears to me that the qualifications which will be required for such a Court are somewhat different from the qualifications necessary for those Judges